THE NEW

NATURA BREVIUM

OF

The Most Reverend JUDGE,

Mr. *Anthony Fitz-Herbert*;

Corrected and Revised.

Whereunto are added.

The Authorities in Law, and some other Cases and Notes collected by the Translator out of the Year-Books and Abridgments.

WITH

A New and Exact TABLE of the most Material Things contained therein.

LONDON.

Printed by *W. Rawlins*, *S. Roycroft*, and *M. Flesher*, Assigns of *Richard* and *Edward Atkins*, Esquires.

And are to be Sold by *Charles Harper*, *William Crooke*, and *Richard Tonson*, at their Shops in *Fleetstreet*, without *Temple-Bar*, and at *Grays-Inn Gate* next *Grays-Inn Lane*. 1687.

Cum gratia & privilegio Regiæ Majestatis.

THE PREFACE

Compoſed by the Reverend Judge,

Mr. *Anthony Fitz-Herbert.*

IN every Art and Science there are certain Rules and Foundations to which a man ought to give credit, and which he cannot deny.

In-like manner there are divers Maxims and Fundamentals in the Knowledge of the Common Laws of the Land, which a man ought for to believe very neceſſary for thoſe who will underſtand the ſame Law, eſpecially at the beginning of their Studies: for upon thoſe Fundamentals the whole Law doth depend. For which purpoſe in time paſt there was compoſed a very profitable Book call'd The Regiſter, *which doth contain ſundry Principles, by which he muſt be well inſtructed who would ſtudy the Law. And alſo for that purpoſe was there compoſed by a Learned man a Book called* Natura Brevium, *which Book doth declare and*

ſet forth the Diverſities and Natures of many Original Writs, with their Proceſs; which Book helped much to the underſtanding not only of the Regiſter, but alſo of the Law of the Land. But becauſe of late time that Book hath been tranſlated into the Engliſh Tongue, and many things are therein which are not according to the Law of the Land, and many other things are omitted which are very profitable and neceſſary for the underſtanding of the Law; for that cauſe is this Work compoſed and publiſhed. Wherein if there be any thing againſt the Opinion of the Sages who have the Adminiſtration of the Laws, the requeſt of him who hath taken the pains to make this Treatiſe is, that they would correct and amend the ſame, as they ſhall ſee good, according to the Law.

THE

THE TABLE OF THE WRITS Contained In the enſuing TREATISE.

A

Accedas ad Curiam p.40
Accompt 257
Admenſurat. Paſturæ 276
Admenſuratio Dotis 331
Ad admittendum Clericum 84
Ad quod dampnum 493
Alienation ſans licens de Roy 598
Annuity 339
Annua Penſio 513
Aiel ou Beſaiel 491
Apoſtata capiend. 519
Aſſiſe de Novel diſſeiſin 393
Aſſiſe de darrein Preſentment 68
Aſſiſe de Mortdaunceſter 433
Aſſiſe de Nuſance 407
Aſſociation in Aſſiſe 412
Attaint 233
Attornat. faciend. vel recipiend. 349
Attachment 6
Audita Querela 226
Audiendo & Terminando 243
Auxilium ad filium militem faciend. vel filiam maritand. 183

C

CAuſa Matrimonii prælocuti 455
De Cautione admittenda 141
Ceſſavit 463
Certificate ſur Aſſiſe ſue 403
Certiorari à remover Record 537
Champerty 382
Clerici non elegant. in Offic. Ballivi, &c. pro terris ſuis 390
Contra formam Collationis 468
Commiſſio pro ætate probanda 569
Common de Paſture, Turbary or Piſcary 399
Compoto 257
Contributione faciendâ 361
Contra formam Feoffamenti 363
Conſpiracy 252
Conſuetudinibus & Servitiis 337
Conſultation 119
Covenant 323
Covenant de levie Fine 326
Coronatore eligendo vel exonerando 364
Cozenage 492

Corrodio habendo 510
Cui in vita 418
Cui ante divortium 474
Curia claudenda 282

D

Dartein presentment 68
Dedimus potestatem de Attornato faciend. 55
Debito 263
Decies tantum 380
De exonerando pro rata portione 521
Detinue 506
Diem clausum extremum 558
Disceit 211
Distress en Gieue & Royal Chimin 387
Dote unde nihil habet 329
Dote assignando 582
Droit en London 12
Droit Patent 29,3
Droit de Dower 18
Droit de Advowson 69
Dum fuit infra ætatem 426
Dum non fuit compos mentis 449

E

Ejectione firmæ 439
Ejectione Viridariorum 366
Electione de Clerk a prend. Obligation 367
Entre en le Quibus 424
Entre ad terminum qui præteriit, 446
Entre in casu proviso 456
Entre in casu consimili 458
Entre ad communem legem 461
Error 44
Error in London 49
Escheat 320
Estrepamento 435
Essend. quiet. de Tolneto 503
Excom. capiendo 140
Executorie super Stat. Mercat 289
Executio super Stat. Stapul. 291
Executio in Com. Palatin. 293
Executio Judicii 42,43
Ex gravi querela 41
Exoneratio Secte ad Cur. Com. vel Baron. 352
Ex parte talis 186
Ætate probanda 569

F

Also Judicio
Formedon in Descendr 401,406
Formedon in rem. 393
Formedon in Revert. 487
Forcible Entre 550

G

Grants fait per le Roy 597

H

Hæretico comburendo 594
Homagio respectuando *ibid.*
Homine replegiando 548

I

Demptitate nominis 591
Idiota inquirendo & examinando 517
Insimul tenuit 480
Intrusion 451
Juris utrum 109

L

Abourers 372
Levari facias 386
Leproso amovendo 520
Libertate probanda 172
Libertat. allocat. 509
License de aller al Election 379
Livery hors del main le Roy 565
Livery post mortem patris & matris 570
Livery apres mort le Tenant per le Courtesie 570,578
Livery

Livery apres mort le Tenant in Dower 572
Livery apres mort le Tenant entail & pur vie 572
Livery pur le Heir en tail 573
Livery pur ter. per petit Serjeanty ib.
Livery pur le Aunt & Neece de aver Partition 574
Livery pur de fair Livery fait devant 575
Livery, & de partitione faciend. de eeo 576
Livery pur terres in Socage 578

M

Magna Aſſiſa Eligenda 9
Manucaptio 553
Melius inquirendo 565
Meſne 360
Moderata Miſericordia 167
Monſtraverunt 30
Mortdaunceſter 433

N

Nativo habendo 171
Ne admittas 83
Ne injuſte vexes 21
Non ponend. in Aſſiſis, &c. 368
Nomina Corrodiorum & Penſion. in Anglia 514
Nuper obiit 437
Nuſance 407
Nuſance Vicuntiel 410

P

Partitione facienda 137
Parco fracto 221
Perambulatione faciend. 296
Plegiis acquietandis 304
Pone de remover Plee, &c. 155
Ponend. in Aſſiſis, &c. 368
Poſt diſſeiſin 421
Protection 62
Præcipe in Capite 30
Prohibition and Inhibition 88
Procedendo ad Judicium, 341, 533
Parſons ne Prebends ne ſerront charge pur lieur biens 391
Pulchre placitando 596
Pur faire Proclamation que nul jecte ordures en les foſſes 392

Q

Quare Impedit 71
Quare non admiſit 105
Quare incumbravit 107
Quarentina habenda 360
Quare ejecit infra terminum 439
Quæ plura 564
Quod permittat 272
Quod ei deforceat 347
Quo jure 284

R

Rationabili parte 270
Rationabilibus diviſis 285
Recogniſance en County 294
Receiption 158
Recordare 157
Recto in London 12
Recto de Dote 18
Recto Clauſo 23
Recto de rationabili parte 19
Recto de cuſtod. terr. & hæredis 308
Replegiare de averiis 152
Reparatione faciend. 281
Reſcous 223
Redisſeiſin 417
Reſtitut. Temporal. 376

Scu-

S

Scutagio habendo 185
Securitate pacis 177
Securitati inveniend. quod non le ei-vertat ad partes exteras sine li-centia Reg. 188
Secta ad Molendinum 174
Si non omnes 107
Sine assensu capituli 431
Spoliation 80
Super Stat. 12 R. 2. cap. 13. que nul ject Dung &c. 192
Super Stat. Ed. 3. an. 23. versus La-bourers 37
Sur Statut. que nul soit Vitaillers pur le temps que il est Mayor 384
Sur Stat. 1 Ed. 3. cap. 12. 389
Supersedeas 124
Sur Stat. pur Seneschal & Mareschal le Roy 335
Sur Statut. Articuli Cleri 386
Pur Seiser terr. & Tenant en Dower que marrie sans License 388

T

TRespas 190
Trespas sur le Case 204
Tolsetum 303
Tolt 303

V

VAsto 123
Vi Laica removenda 121
Victuallers 384

W

WArrantia diei 56
Warrantia Charte 297
Waif 123
Withernam 164

The

The TABLE to the Book of *Fitz-Herbert's Natura Brevium.*

Abatement.

Where the Writ of Replevin abates the Writ of Recaption shall abate 160 *L*

If a man uses his common pendant his Writ it shall abate it 402 *M*

Where for want of *Vi & armis*, and when, if it is put in 190, 191, 192 *H*

Non tenure shall not abate a *Nuper obiit* 438 *D*

A Writ of disceit shall not abate for form 211 *E*

Where an *Audita querela* shall abate 231 *R*

In Debt, when it is in the *Debet* and *Detinet* 263

When in *Quod permittat* 274, 275 *C*

Nonsuit in the first Action shall not abate a *Warrantia Chartæ* 300 *L*

Where the Writ of Covenant shall abate, and where not 325 *E*

Accedas ad Curiam.

To remove a Writ of Covenant out of a Hundred Court 323, 324

Abbot, See **Corporation.**

Actions.

When in Actions brought the King sendeth his Writ not to proceed *Rege inconsulto*, 344 *D*, 345 *E*

A *Decies tantum* is a Popular action 380 *A*

Actions upon the Case, v. **Trespass upon the Case.**

Lies against the Arch Deacon for refusing to give Induction 306 *H*

Lies against a man for falsly indicting another 256 *L*

Lies upon a verbal Covenant 324 *G*

It lies for a Damage received by a Nusance 393

Accompt.

The forms of the Writ 258, 259

In what cases it lies 257 *P, Q, A B, C*, 258, 259, 260.

Where may be sued 258 *D*

It lies against one that was not actually Bailiff 257 *Q*

Against him that receives the profits of my Land *ibid. A*

For the Infant against his Father, or Guardian in Socage 257 *B*, 260 *A, B*

Against one that enters without his Consent 260 *B*

The Executors may have this Action 257 *C*, 258

It lies not against Executors, 257 *C*

It lies between Merchants that occupy in Common 258 *D, E*, 261 *G*

For the Successor 258

Where the Plaintiff may remove it by *Pone*, and where the Defendant 259 *G*

The Writ of *Monstravit* upon the Statute, and where it lies 259 *H*, 260

Process of Outlawry lies in Account 259

Debt lies for arrearages of Accounts 261 C
It lies against a Woman, but not against an Infant 261 D
Against a Prior 261 F
Against Baron for the receipt of his Feme 261 F
It lies for Goods delivered beyond the Seas 261 G
Where Goods are delivered upon condition ibid. G
Lies not against a Deputy Receiver 262 B
Lies not against an Apprentice, but it lies against a Servant who is sent to receive mony 262 D
Where against Collectors ib. F
Where the Writ of *Ex parte* lies for the Accomptant 285 I

Ad Clericum admittendum.
The form of it 84 B
For whom it lies, and to whom to be directed 84 B
Where it lies for the Kings Patentee 85 D
Where to the King *Ex officio* 85 E
For the Patron after the 6 Months ib. F
The Defendant shall not have it upon the abatement of the Writ 85 H 86 M
The Defendant must make title 86 H,L 86 A
When the Plaintiff shall have it without making title ib. N
It may be directed to the Bishop or his Vicar General against whom the Recovery was ib. O
Distress against two 87 A
For a Stranger not party to the Writ ib. C
Upon agreement to present by turns ib. E, F

Admeasurement de Dower.
The form of the Writ 331 G
Where to be brought ib. F
Where it lies, and for whom 331 F, G, H 332
It may be removed 331, 332
Where to be made 331 H, 332
It lies not of an Improvement 332 C
Upon a possession in Law ib. D

Admeasurement de Pasture.
The form of it 276, 278, 279
What it is, and where it lies 276 B, C 280 H
Lies not for the Lord 276 D 279 D
Nor against him, but an Assize only 276 D 277
Commoners by Vicinity shall have it 277 E
It may be removed 277 E, G
The Count in it 278 A
The form of the Writ to the Sheriff to make it 279 B 279 C
Where the Writ *de Secunda Superoneratione* lies, and the form of it 279 E, 280
Out of what Court 280 F
The forfeitures upon the Judgment 280 G

Ad quod dampnum.
The form of the Writ where the Lands are given in Mortmain, 493 A 494, 495
Where a Chaplain or Woman gives Lands 494
For a Chaplain and Lay-man 494 C
Where notwithstanding the Kings license to alien, there must be an *ad quod dammum* 495 B
The form of the Writ where the King grants the Abbot license to purchase 496 F

To

To an Abbot or Bishop to appropriate a Church 497 H
They must be made according to the Letters Patents of licenſe 497 C,D
It lies where an Hoſpital or Prebendary is to be founded 498 E
Where the King's Tenant aliens there ought to be an *ad quod dammum* 498 H
The form of it 498 H, 499
Where the King gives leave to make a Ditch near to one of his Parks 500 D, 501 E
Upon granting the Aſſize of Bread, &c. 501 F
Where Lands are given to the King to be given to a Religious houſe 501 A
Upon granting of a Pardon for Intruſion 502 D
For a Forreſter upon granting over his Office 502 E
For cutting down Trees, and making Aſſart of the wood in the Foreſt 502 F
For enclosing part of a Foreſt 502 F
Where a Patent is granted, *abſque aliquo brevi de ad quod dammum* 503

Advowſon.

The King ſeized of an Advowſon, and during the Avoidance grants this over, he ſhall not preſent 74 N
Where the Executor ſhall preſent upon an Avoidance 74 B

Aid.

Between Parſon, Patron and Ordinary 109 R
Between the Lord and his Servant 159 F

Aid le Roy.

Upon *aid prayer* the Action ſhall ſtay until a *procedendo* be iſſued out of the Chancery, 342 E, F,G
How the Writ ought to be 342 F,G
It muſt appear that the King is concerned, otherwiſe a *Procedendo* lies 344 C

Aiel or Beſaiel.

The form of the Writ of Aiel 491
What it is, where it lies, and for whom ib.
The Aunt and Neece ſhall joyn in it ib.H

Alienation ſans Licenſe.

The King's Tenant ought not to alien his Lands until an *ad quod dammum* ſued out, and the King's licenſe for it 498 H
The form of the Writ of *ad quod dampnum* 498 H
In what caſes a Licenſe under the Great Seal muſt be ſued out 498 H 499 B, 500 C
Upon alienation without Licenſe the King ſeiſeth the Lands 501 C

Amercement.

In what Caſes, and upon what Amercements a Writ *de Moderata Miſericordia* lies, 167,168,169,170
What perſons are to be amerced, and how 170 B

Annuity.

Debt lies not where it continues 268 H,I
It lies for Executors for arrears of an Annuity 267 C,266 L, 268 I
The form of the Writ, 339 B, 340C

Where to be brought 340 E
In what Cases it lies 339
In what Courts 339 B,G
Where the Heir shall be charged 340 F
It lies upon a Grant by a Corporation 340 G,341 H,I,K
Upon the King's Grant 341 L
By Patron and Ordinaries Grant 341 K

Annua Pensio.

Where this Writ lies and for whom 513 G
The form of it 513
The form of the Grant of a Deacon 514 H
What Abbies or Priories ought to have Pensions and Corrodies 514

Appeal.

Lies not after Judgments in *Quare Impedit* 96 A, B

Appendant.

An Hospital may be appendant to a Manor 94 B

Apostata Capiendo.

In what Cases it lies 519 C
The form of the Writ ib. C
There must be a Certificate in Chancery 519,520

Arrest.

The Body of a Clergy man not to be taken in Execution upon a Statute 290 I

Assise.

An Attaint lies not in an Assise, except before Justices of Assise or Common Pleas 251 H
Against the Lord for surcharging the Common 276 D, 277
The King cannot prorogue an Assise because the Defendant is in his service 342 H
Where new Judges are made after Verdict, and before Judgment 343 I
That they do not proceed *Rege inconsulto*, in what cases it shall be 344 D,345 E
When an Assise may be put off for a time 345 F

Assise de Novel disseisin.

Where it lies, and for whom, and in what Courts 393 A,B
For what things 396, 397 H, 398
The days of the Return 393
Cr 394
The Justices of Assise may take it without Patent 394 F,495 A
The form of it 394 F
If before other Justices 394 G, H, 395 I, K
The form of it in the King's Bench or Common Pleas 395 B
The Demandant must find Sureties 395 C
Where there may be a Voucher 396
It lies for Tenant by *Elegit*, &c. 396 G,397
The form of the Patent where there are several Assises depending between two persons 397 I
What shall abate it 397 B
A Patent directed to Justices 400
Of what Seisin 397 A, C, 398 F, H, 491 I
There may be several things in one Writ 398 D
Who shall be Disseisors, and who not 398 G, H
Where the Writ of Assise of Common of Pasture, &c. lies 398 L

The

The forms of it, 399
In what County, and where to be brought 399,400

Assize de hortdamcesser.

In what Courts to be brought 393 *C*
The days of the Returns 393 *C*, 394
The form of the Writs 433 *E*, 434,435
The Process in it 435 *O*
In what Cases it lies 433, 434, 435,436
The general Patent will serve 433, 434
The form of the Writ of Summons 434 *G*
The Aunt and Neece may joyn in it 434
A Certificate writ of Association and *Si non omnes* will lye upon it 435 *D*
It lies for the Heir against the Guardian 435
Voucher lies in it *ib.*
Lies not for Lands devisable by Will 436 *H*
It lies against Strangers, and not Privies in blood 436 *L*
It lies for a younger Brother, where the elder hath been gone 18 years 436,437

Assize de Nusance.

The form of the Patent 407 *L*, 408
Where, in what Cases, and for whom it lies 407 *I*, *K*, 408 *X*, 409 *A*
In what Counties it shall be sued 407, 408
Setting up a Fair, where it shall be a Nusance 409 *A*

Assize de Darrein Presentment.

The form of the Writ 68 *L*
Where and for whom it lies 69 *G*, *H*, *I*
Tenant for years 69,70 *H*
Alienation upon an Infant 70
Coparceners *ib. A*
Where it may be per Journey &c. 70 *C*

Assize de Fresh force.

No writ of false Judgment lies in it 42 *L*

Association in Assise,
& Si non Omnes.
See **Commission.**

What it is, and where it lies, 412 *E*, 415 *H*
The form of it 412
For several Assizes 415 *H*
The form of the Writ to Justices new assigned 413 *F*, 415 *A*, 416
For the Associate 413, 415, 416
The form of the writ of *Si non omnes*, 414 *H*, 241 *H*, 245 *C*, 416
An Association after an Association lies not 414 *D*
A general Patent to take all Assises *ibid.*
The old Justices shall deliver their Records to the new ones 415 *G*
Where one of the two Justices cannot come, and another is added 415 *A*, 416
The King may make an Association in Juries, as well in Assizes as Attaints 416
So likewise to the Sheriff in a Redisseisin 417 *D*, 418 *K*
Although the Assize is discontinued, yet the Associations and Writs

Writ of *si non omnes* coming all the Assizes 427 *A*

Attachment.

Against the Lord that refuseth to hold his Court, so that his Tenant cannot proceed upon his Writ of Right 6 *E*

For distraining after a *Ne injuste vexes* 21 *D*

Lies against Lord in *Annuent. Mensne*, that refuseth to hold his Court 26 *D,E*

Attachment lies against the Sheriffs that refuse to execute a *Recordare* 26 *E*, 27 *A,B,D*

Attachment against the Lord for distraining after a *Monstraverunt* 32 *B, C*, 33 *F,G,H,I*

For not doing Execution upon a Writ *de Executione Judicii* 43 *B*

Lies upon an *Admittendum Clericum* 84 *C*

Attachment lies upon the Bishops refusal to admit the Clerk upon a *Quare non admisit* 105 *C*

When it lies against the Sheriff in title *Excommunicato capiendo* 140 *C,B*

For not executing a *homine Replegiando* 150 *B*

Lies against the Sheriff for not executing a *Pluries* in Replevin 152 *E*

Upon a *Moderata Misericordia* 167 *A,B,C*, 170 *D*, 171

After a Writ *de Securitate Pacis* 178 *A*

Lies against the Sheriff for not delivering the person that brings his *Assisa querela* 232 *F*

For not executing a Writ of Conspiracy 256 *N*, 257

Lies for proceeding to Judgment after a *Pone* allowed 264

Lies against the Sheriff if he will not make admeasurement of Common upon a Writ directed to him 277 *F*

Lies against a Major that will not certifie a Statute 289 *G*, 291 *D*

Against the Sheriff for not executing an Execution upon it 295 *B*

Lies against a Commissioner that will not certifie the Conusance of a Fine 328 *B*

It lies for proceeding after a *Procedendo ad Judicium* 342 *C*

It lies not against Justices upon Record 344 *A*

It lies against the Lord for distraining after a Writ *de Exoneratione Sectæ ad Cur. Com. out Berwic* 356 *D*

So likewise against the Sheriff or his Bayliff 357 *A*, 358

It lies when more Services are distrained for than are due 363 *F,A*

Against the Sheriff for not returning right persons Jurors 371

Upon a Writ *de Tolnete quiet. Est.* 505

It lies for not obeying the Writ *de Carrodio habendo* 511 *E*

It lies for proceeding after a Writ *de Pulchre placitando* sued out 596 *C*

Attachment for Prohibition.

When and where the King may have it 90 *F*, 95 *M, N*, 96 *A*

Where the party sued in the Spiritual Court may have it, 90 *H, I*, 96 *B*

Where

Where it lies against the Judge 98 L
For Suit for Treſpaſs 99 M
For illegally Excommunicating 92 E
Where it lies for proceeding after a Prohibition 93 H
Where it lies after Judgment in *Quare Impedit* 96 A,B,95 M,N
For citing the King's Chaplains for Non-reſidency 99 G
For ſuing out of the Realm 100 H
So likewiſe upon a Citation from *Rome* 100 I
For ſuing out the Juriſdiction 102 F
For ſuing for above 40 s. in a County-Court 103 A
For dividing an entire Debt into ſeveral Plaints ib.
For ſuing in Treſpaſs *Vi & armis* 104 B
For Charters which concern the Inheritance 105 B
For proceeding after a *Non Ponend. in Aſſiſa* 368 C, 370 C

Attainder.

Who ſhall have the Eſtate of a perſon attainted, and when 321 H, 322 K
The Perſon of the profits ſhall anſwer the King 322 K

Attaint.

The form of the Writ 233 H,N, O,234 A,C,D
In an Aſſiſe 239 I,K, L, 240 241 H
Where it lies 233 G, 235, 237 M, 238 O
What is a good barr to it 237 G
In what Court 233 G, 237 M 238 O, 239 H
It lies for that which toucheth the Freehold 233 I
In Treſpaſs 233 K,L
For Damages unpaid 233 M
Upon a *Niſi prius* 233 N, 234 A
In a Liberty or Corporation 233 O
Upon a Plaint without Writ 234 A,546 E
Within the Verge 234 C, 546 F
The Proſecutor may be bailed out of Priſon to proſecute his Writ 234 D
Where the Heir ſhall have it 238 B, 239 F,G
It lies for Vouchee 235 E, 238 A
For him in Reverſion 235 E, 238 A
It lies not where the Witneſſes affirm the Verdict 235
Where it lies although the Verdict is true 235, 236 A
Upon an enquiry in waſte 236 C
It lies for the King 236, 238 R
Where there are two Enqueſts 236 E
In an Aſſiſe 237 F
It lies before Execution ſued 237 G,H
The Judgment in Attaint 237 H, 242 L,243
It lies againſt the Terre-Tenant 237
It lies not upon an Appeal ib.
Non-ſuit after appearance is *Peremptorie* 238 D
Where the Writs muſt be ſeveral 239 E

Lies

Lies not upon a false Verdict given in an Assise, except it be before Justices of Assize or Common Bench 241 H

Upon a Rediſſeiſin 241, 242

The puniſhment of the Jurors when convicted 242 L

Attornato faciendo & Recipiendo.

The form of the Writ 349, 350

When it lies, and for whom 349 D, 350, 351, 352

When the Tenant is in ward 350 A

To do Suit in a Hundred Court. &c. 351

To the Bayliffs to receive an Attorny 351 C

Attorney.

Their Powers, and who may make them. See in Title *Dedimus poteſtatem.*

An action lies againſt him for Covinous practice 213 D, 227 A

Where he may plead *Non ſum Informatus* 217 I

May bring Debt againſt his Clients upon his Bill 268 L

May be made in a *Quid Juris clamat & per que ſervitia* 328

The Tenant may make Attorney to do ſuit at the Lord's Court 350

So likewiſe in the Hundred or other Court 351

They are to be admitted to execute their Authority 351, 352

Attornment.

Grantee of a Reverſion by Fine ſhall not bring waſte until Attornment 133 I

Where Debt for Rent lies by the Reverſion without Attornment, and where it muſt be 268 N

The Meſne not compellable to attorn 302 L, 303

Where a *Diſtringas ad Attornandum* lies 328

Audita Querela.

The form of the Writ 227

Where it lies, and for what, 226 H, 227 A, 228, 229, 230, 231, B, 346 A

Out of what Court 231 S, B

To whom directed 227, 231 S, B

Where an Attorney covinously makes Default 227 A

One Feoffee may have it againſt another 228 B, 230 G

Upon a Defeaſance 229 C, 232 G

It lies upon a Releaſe after a Verdict 229 A, 230 I, 231 B

Againſt the Grantee of an Eſtate 229 E

It lies for the Heir 229 B

When a Stranger may have it 230 G

Upon a forged Statute 229 G, 230 H

It lies not after a Summons returned upon a *Scire fac.* 230 I

It lies for an Infant 230 K, 232 D

For one *in darreſſe* 230 L

Upon a Releaſe to one Obligor 230 M

It is a *Superſedeas* 230 O

It may comprehend two matters 231 A

Where it ſhall abate ib.

The Proceſs in it ib.

Where

Where one of the Common Pleas, and where out of the Chancery 234 B, 352

For the Feoffee of part of the Land which did belong to the Recognizor 332 E

Where the mony upon a Statute or Recognizance is entred into, and an Acquittance given 232 F

Auncient Demesn.

What Lands are Auncient Demesn 30 D, 35 D, E

When a Tenant is outted or disseised what remedy the Law allows him 23 F

The Mannor and the Demesns which is called *Auncient de Mesne*, is under the Jurisdiction of the Common Law; but the Lands which are holden of the Mannor are suable no where but in the *Auncient de Mesne* Court 24 M, 216 A

What remedy a Copyholder hath to recover his Land 25 B, 26

The Tenant may bring an Assize against his Lord 26 E.

What acts done make *Auncient de Mesne* Frank-free 28

None but Socoage Lands are Auncient Demesn 28, 30 B

In what cases they may have their writ of *Mandamus* 30 D, 31 F, G 359 C, 371 F

The priviledges of *Auncient de Mesne* 30 E, F, 359 C, 371 F, 505 A

Disceit lies upon a Fine levied at the Common Law 216 A

Not compellable to appear at any Leet or Torn 359 G

Nor to serve upon Juries 371 F

Not to pay Toll, Pontage, &c. 505 A

They shall not contribute to the expences of Knights in Parliament 507 C

Brevis de Auxilio ad filium militem facere vel ad filiam maritand'.

The form of it 183 A

When it lies, and for whom 183 B, 184 G, H

How much must be paid 183 C, F

It was at the Common Law 183 D

To whom directed 183 E, 184 H

For the King's Tenant 183 F

The Lord may distrain for it 183 K

Bail, Vide title **Mainprize.**

Bailp in Account, vide tit. **Account.**

Bailiff of a Mannor.

IN what Cases the Lord of the Mannor shall bring a Writ of Rescous, for a Rescous done to the Bayliff 225

He shall have an action of Trespass for the loss of his Service 225 B

Bayliff of a Franchise.

In what Cases he shall maintain a Writ of Recous 224 G, 225 A, B, 226 D

Where the Lord shall have it 225 B

The Plaintiff upon an Execution shall have it 226

Where compellable to admit an Attorney 351, 352

Must have sufficient Lands within the County 365 A

A Clergy man must not be elected 396

Baron & Feme.

A Feme-covert may be Attorney for her Husband 59 C

She ought to present within six months 76 T

Feme excused from waste by her husbands death 132 I

The Writ *de Securitate Pacis* lies for the wife against the husband 179 F

Where they shall joyn in a writ of Disceit 276 C

Conspiracy lies not against them because but one person 296 K

Account lies against Baron upon the Receipt of his Feme 261 F

Debt (during Coverture) lies against Baron and Feme for the debt of the Feme 265 F, 267 C

Against the husband upon the wives Contract 265 C, 266

The husband after the wives death shall not bring an action for a Debt due to her 267 C

Where the wife shall have a *Rationabili parte bonorum* 270 L

May joyn in a Writ of Mesn 302

The wife may have a Detinue against her husband after divorce 308 A

Quod ei deforceat lies for them 347 F, 348 A

They may be retained Servants 375 D

Where she shall be a Disseisoress, and where not 398 G

Where they may have a *dum non fuit infra ætatem*, 427, K, L

Where the wife shall have a *Cui in vita* 428, 429

Where she shall have her *ad terminum qui præterijt* 448 A

The wife may have a *Supplicavit* against her husband 530 F

Beaupleader.

Where the writ *de Pulchra Placitando* lies, and to whom to be directed 396 A, C

The form of it 396 B

An Attachment lies upon it 396 C

Cause Matrimonii prælocuti.

THe form of it 455 B
In what Cases and for whom it lies 455, 456
It lies in the Par & Cui 455 B
& Par. Cui & Par E
The Aunt and Neece may joyn in 455 F
The husband and wife may sue it 456 I
It may be sued without any writing to prove it 456 L

Certificat admittend.

The form of it, 141. and where it lies C
To the Sheriff to deliver a person Excommunicated 141 D
Bishops Certificate of Absolution 141 F, 142
Excommunication by the Chancellor of *Oxford* 142 G
A *Supersedeas* granted to the Sheriff to discharge one taken upon an *Excom. Capiendo* 143 D
So likewise upon an Appeal from a Sentence 144 E
Bishops Certificate of Excommunicement 144 F, 145 B, C, D
Court of *Rome* and their Bulls 145 B
Supersedeas during an Appeal 145 C, 146 E
Scire facias 146
For a person convict of Felony 147 A
For Restitution to a Church or Sanctuary 147 C
Vagrant, Monk or Frier 148

Cause de Remover.

In a writ of Right Patent 6 F, 7 A, 8 C, D
In a Writ of Right of Dower 15 A, E, 16
For the Petty Jury in Attaint after Conviction 242 L

Certiorari. N

What it is, and from whence it issues 543 A
To certifie the proceedings in the Ancient Demesn (which were sent into the Common Bench) into the Chancery 29 H
To certifie Waste 131 A
To remove the Sureties and Recognisance upon a *Supplicavit* 181 C
Who may have it 180 B
To certifie it into Chancery 179 G, 180, 181 D
For the Petty Jury in Attaint 242 L
To the Executors of Commissioners of Oyer and Terminer 259 A
All Statutes may be certified into the Chancery, before Execution can be sued upon them 289 C, 290 E, F, 291 D, 293 B
In a *Perambulatione faciend.* 296 C, 297
To certifie the Conusance of a Fine 328 B, 329 D
It lies to remove the Record to the new Judges after Verdict, and before Judgment in an Assise. 343 I, 345 G, 532 D
To certifie Records from one Court to another 345 I, 548 H
To Remove a Prisoner Convict of a *Redisseisin* into the King's Bench to be fined 422 K, 423, 437
To remove the Record of a *Redisseisin* 537, 538

Post Disseisin, or Assise *De Novel Disseisin* 538, D, 546 D, E, 548 D
Upon an Attaint sued 538 E, G
For damages upon the removal of an Assise of *Novel Disseisin* 538 A, 541 B
Where the recovery is in an Inferiour Jurisdiction to certifie it into the King's Bench, to make Execution 538 E, 545 B, 546, 547 L
Where there are new Judges 539 D
Upon a Voucher to warranty in an Assise 539 G, 540
To certifie all Pleas before Justices in Eyre, when they come into the Country 540 K
To remove a Record from the Common Pleas into Chancery, and from thence into the Kings Bench by Mittimus 541 A
To stay proceeding where the Record cannot be had 542 D
To the Mayor of the Staple, to certifie a Statute 542 D
To certifie an Indictment taken before the Justices in Eyre, and other Justices 544 C, 546 C, H, 547 K
To the Mayor and Sheriffs of *London* 544 E
To certifie an Outlawry 545 G, 546 I, 549 G
To the Barons of the Exchequer, to certifie a Debt due to the King 546 G
To a Bishop to certifie how many Admissions to a Church since 1 E. 41 547 M
To the *Custos Brevium* 547 N
For a Peer of the Realm that is suing to an Outlawry 547 C, 548
To the Escheator 549 H, 550 A
To certifie a Record upon *Se Defendendo*, found that there may be a Pardon 548 F

Certificate of the Bishop.

In what Cases 115 L, 121 D, E, 140 N
Upon a *Vi Jacta Removendo* 121 D, E
The form of the Bishops Certificate 122 B
Before the Writ of *Excommunicato Capiendo* can issue forth 140 N
In Bastardy 135 G

Certificate sur Assise, Attaint, Mortdauncester, &c.

Where the writ of Certificate upon Assise sued lies 403, 404 F, 407 D, E
Where it ought to be sued 403
Before whom 406 B, 407 F
To whom directed 403
The Judges shall have a Patent 403, 404 A
The form of the Patent and Certificate 403, 404
Where the Bailiff pleads a wrong Plea 404 F, 405 C
Upon new matter there may be a special Patent 405 B
Where the Release is left in Court after it is pleaded 406 D
Upon a Certificate sued there may be a *Si non omnes*, and an Association 406 A

Cessavit.

The form of the Writ 463
For Services to be done in the Church 465
In the *Per*, *Cui*, and *Post* 463
In what Cases, and for whom it lies,

lies, 463 H, 464, 465, 466, 467, 468 D, E
Lies not between Dower and Tenant in Tail 464 I
The quantity of the Services, nor Seisin not Traversable 464 F, G
Where the Aunt and Neece shall joyn, and where not 464 H
Several persons 465
It lies upon a Cessor for two years ibid.
What is a good Plea to it 465 I
For Service to be done in the Church, and also for Charitable uses 465, 466
Where Land is given to find Estovers, or the fourth part of the Annual profit, there this Writ will lye if there is a failer 466 A
It will not lye but where there is a Tenure 467

Champerty.

What it is 332 A, C, 383 K, L
The form of the writ 382
In what Court it lies 382 B
Who shall be punished 383 D, K, L
What shall not be Champerty 383 D, F, H
False Latin shall not abate it for the King 383 I
Against Officers 383 N

Churchwardens.

May have Trespass for taking the Goods of the Church in their own, or Predecessors time 203 K

Commission.

To levy Escuage 187 E
Where the Writ of Summons lies 241 H, 245 C, 247 A
of Fish Titule, Oyer and Terminer 245, 244, 247, 248
To repair a decayed Wall or Bridge 281 E
To take a Fine 326 G, 327
To certifie the Bishops Fealty 378 B

Common.

If a man be disseised of his Common, he shall have an Assise 309, 400
Quod permittat lies of Common, 272 G, 273 H, L
An Admeasurement of Pasture lies between the Tenants when the Common is surcharged 276 B, C, 277 E
But the Lord may distrain 276 D
But if the Lord surcharge, the Tenants may bring an Assise 276 D 277
What Commoners shall be stinted ibid.
Where the writ De Secunda superoneratione lies &c.
What it is 279 E, 280
He cannot have a Curia Claudendo 283 C
Where Common is claimed in Land of another, he may have his Writ of Quo jure 284
Where the Tenant may improve against the Lord 398 E
Common appendant cannot be used but with those Cattel that soil the Land 400 B, 401 C, 402 K
But if a man claim Common without number, or for twenty Cattel, then it is otherwise 401, 402 M

Who may claim Common of Vicinage 401 D,E
Common of Estovers must be to the old Houses 401 H
And his appurtenant 402 N

Consimili Casu.

Where it lies 109 D,110 F

Cuspe Dedijt.

In what Cases it must be, and what it is 376,377,378 C, 379
The form of the Writ 379, 380

Contra Formam Feoffamenti.

The Form of the Writ 363
In what Cases it lies ib.
Who shall have it ib. 364
Against whom it lies 364 H

Conspiracy.

The several forms of the Writ 253,255,256 N
Where to be brought 256 M
What it is, and for what it lies 252 D,E,F, 253,254,255,256
It lies against two persons at the least 256 K
It lies not for an Acquittal upon an Appeal, except there is an Enditement 252 F
It lies not against Baron and Feme because but one person 256 K
The Accessory shall have it 253 A
The form of the Writ 255
Upon Enditements before any who have Goal-Delivery 295 B
It lyeth not against the Enditers 253 C,D,254
One found Guilty, and the other not Guilty 254 E,F
Lies not where there is an Act of General Pardon 254 G
Shall recover treble Damages 254 G, 255
Where there is a Conspiracy against a Man of Law 253 B
It lies upon an Enditement for Trespass 295 G, 256 F
For forging of Deeds 255 D
For finding a false Office of my Land 256 H
An Action upon the Case lies against the person for falsly Enditing another 256 L

Consultation.

The form of the Writ 319 L, 320 A
In what Cases it lies 118 N,Q, 113 P, Q, R S, A,B, 114 D, 115 G, 115 L, 116 B, 116 C, 117 F, G,H, K,L, 118 M, A,B,C,D, 119 K,L
To whom to be directed 114 E, F
Where two Consultations shall be granted 114 F
Lies in all Cases of Tithes 115 G, H
Lies, *Pro Silva Cædua* ibid.
In some Cases for Slander ibid. K, 119 G
No damage to be recovered in the Spiritual Court 115 K
Illegal Oaths 116 A
It lies where a Duty is payable to the Church 116 C, 117
Lies after an Appeal 116 D
For forbidding the Friers to hear Confession 117 I
For taking and detaining another Man's wife 117 K

By what Courts to be granted 118 D
The Endorsement of the Libel 118 E
It ought not to be granted but where a man cannot recover at the Common Law 119 H
For the Parson, Parishioners, where 119 L, 120
Upon a Devise to repair the Church, &c. 120 A
To proceed *ita, quod de Cadua tantum.* ib. B
Scire facias quare Consultationem non, &c. 121 C
Upon *Judicavit* 115 L

Contribution.

The form of the Writ 361 B
Where it lies, and for whom 361 B, 362
The Process in it 362 D

Coparceners, vid tit. Partition.

Copyholders.

If a Copyholder in Auncient Demesn is ousted, what remedy to recover his Land 25 B, 26
All Copyholders were originally Villains 26 C

Coroners.

The form of the Writ *de Coronatore Eligendo* 364 M
Where it lies 364, 365
By whom to be chosen 364 F
How to be discharged 364, 365

Corporation.

May be a Disseisor 345 A
Where they shall have a *fine ad sectam Capitali* 431, 432
Where the Abbot and Covent alien, the Donor or his Heir may bring a *Contra formam collationis* 463 F, 469, 470
It lies for the Donor or his Heir only 469 C, D
The form of the Writ ib. D
Cannot purchase Lands without an *Ad quod dampnum* 493 A, 494
May bring a Writ to be discharged from payment of Toll, Pontage, &c. 504 E
Mave have a Writ *de Libertatibus allocandis* 409, 410

Corrody, Pension.

Where the Writ *de Corrodio habendo* lies 510 A, 511 C, D
For the King only 510 A, B
The form of the Writ 510 B
An Attachment lies for not obeying it 511 E
Upon the death of the party admitted, the King shall present again, 512 B
But in case of a Chaplain it is otherwise 512 B
Where it may be granted to several persons, and where to but one 513 C
The difference between the King's Letter, and his Request 513 E
What Tenures are not chargeable with it 513 F
A List of the Priories and Abbies that ought to have Corrodies and Pensions 514, 515, 516

Couzenage.

The form of the Writ 492 K

What it is, where, and for whom it lies 492 *I,L,M,N,O,P*
It lies not between Privies in blood 492 *O*

Covenant.

The form of the Writ 321 *B*
For Executors 324 *F*
Against Executors *ib. H*
The several natures of Covenants 323 *A*
Where the Action to be laid 325 *E*
It cannot be without Deed 323 *C*, Except in *London* 325 *A*
Lies for, and against Executors 324 *F, H*, 323 *D*, 325 *D*
In what Courts 323 *D*, 324
When to be brought 324 *I*
Eignee tithe 324, 325 *M*
May be removed 323, 324
It lies for an Assignee of a Lessee 325 *C*
Where Covenant of an Infant shall bind him 374 *D*

Covenant de Fine levier, vide title **Fines.**

Courtesie of England.

Where Tenant *per* Courtesie loseth his priviledge 125 *D*
The Heir shall not be in ward during the life of Tenant *per* Courtesie 319 *L,O*
He may bring a writ of Escheat 322 *M*
It shall not be upon a possession in fact 332 *D*
May bring his *quod ei deforceat* 346 *B*

Courts, See in tit. **Prohibition, Superfedeas.**

The Jurisdiction of the Marshalsea-Court, and of what things they ought to hold plea, and of what not 535, 536, 537

Cui ante Divortium.

The form of the Writ 454
In what Cases, and for whom it lies 254 *F,G,I,K,L,M*
In the *Per*, *Cui*, and *Post* 454
The Aunt and Neece shall have it *ib. L*

Cui in Vita.

In what cases, and for whom it lies, and where 428, 429, 430
It lies where the husband and wife lose by default the wives Land 349 *G*
The forms of the Writ 428, 429
It lies where Lands are lost by default 429 *I*
Where there is a Joyntenancy 429 *E*, 430 *B,K*
The Aunt and Neece may have it 431 *D*
Of a Rent *ib. G*

Curia Claudenda.

The form of it 283
Where to be sued 282 *G,H*
When, and for whom it lies 282 *H*, 283 *B*
It lies not for a Commoner 283 *C*
How the Court must be 283 *E*

Customs and Services.

The form of the Writ 337 *D*
The nature of it, and for whom it lies 337 *B, C, D, E*, 338, 339
In what Courts it lies 337 *B, E*
Several Tenants may be sued in one Writ 337 *F*, 338
It may be in the Right only 338 *G*
How the Count shall be, *ib. G, I, M*
When Homage is demanded 338 *L*
The Mise shall be joyned 338 *N*, 339

Damages and Costs.

IN Replevin, when Plaintiff shall recover damages and costs, and when not 154 *F, G*, 155 *H, I*
Shall be recovered upon a Recaption 158 *E*, 360 *B*
Upon a Writ *de Securitate Pacis* 178 *A*
Damages are recoverable in a writ of Disceit 217 *M*, 218
How to be assessed when two Defendants sever in pleading, and are found guilty upon two several Enquests 236 *E*

Damage Feasant.

What Beasts, and whose may be distrained for it 158 *E*, 159
Vid. in titulo Pares fractæ 121, 122, 123
Vid. in titulo Rescous 223, 224, 225, 226
Where a Commoner may distrain *Damage feasant* 283 *C*

Darrein Presentment.

For whom, and in what Cases this writ lies 110 *I*

Dies datus.

The form of the Writ 381
In what Cases it lies and for whom 380 *A, B, C, D, E*, 381 *F*

Dedimus Potestatem.

Formerly all persons ought to appear in person, and not by Attorney 55 *C*
The King may license a man to make his Attorney 55 *C*, 56 *E, F, A, B*
The Chancellor shall make Letters Patents thereof 56 *B*, 57 *C*
Plaintiff or Defendant may make their Attorney now, by warrant 57 *D*, 58 *I, K, O, P*, 59
Where the Judges will refuse such Attorney 58 *E, G, H, L, M, N*, 59 *D, E, F*
By an Infant, when and how to be made 59 *H, I, K*
For Vouchee 60 *P*
Where there is Interpleading *ib. S*
For him in Reversion *ib. T*
For Sheriffs or Escheators 61 *V, A*

Default.

In what cases, and upon what default the Writ of *quod ei deforceat* lies. 346,347,348

Debt.

In what cases it properly lies, 262, 263,264,265,266 *A,C*

Lies not in the Spiritual Court, but in cases of Marriages or Wills

It lies against the Heir or Executors for not paying Aid *pur faire fits Chevalier, &c.* 10 *B*,11,269 *G*

It lies for the Sheriff upon an Escape 265 *C*,266 *A*,268 *P*

It may be brought for 10 *l.* in mony, and 10 quarters of Corn 340 *C*

It lies upon diversity of Accounts 267 *G*

The form of the writ of debt, 263 *H,I*, 340 *C*

In what Courts it may be brought 262,263

When in the *Detinet* only, and when in the *Debet* and *Detinet* 263, 264 *M,D*, 265

Forreign Plea 263 *I*

Where it is brought against the Heir 264 *B,C*, 266 *I*

By an Abbot or Executor 264 *A*

It lies against the Ordinary till Administration granted 264 *D*

But it lies not for him 264

For a duty to be done beyond the Seas 265 *E*

It lies (during the Coverture) against Baron and Feme for the debts of the Feme 265 *F*,267 *C*

It lies against the Master upon the Servants Contract 265 *G*

It lies notwithstanding a Re-entry, 266 *H*

Debt upon Bond lies not for the Heir, but for the Executors or Administrators 266 *I*

It lies for the arrears of an Annuity 266 *L*,267 *C*, 268 *I*

Where Executors shall bring Debt for Rent 267 *I*

It lies upon an Arbitrement 267 *G*

If a *Libertate* is directed to the Customer of the King, at what time soever he hath Assets in his hands, Debt lies thereupon against him 267 *I*

It lies not upon an Annuity when it continues 268 *H*

For Bayliff and Receiver for Surplusage 268 *I*

It lies for an Attorney, 268 *L*

It lies not where the Contract is dissolved 268

It lies for Devisee of a Reversion without Attornment 268 *N*

It lies against Lessee after the surrender of his Term 269 *A*

It lies upon a Judgment 269 *C*

Lies between two Partners upon a promise for equality of Partition 269 *H*

It lies upon a becoming Pledge without writing 270

It lies not upon a Bond payable at several days, till all the days are past 290 *I*

Detinue.

The form of the Writs 306 *B*, 307

In what Courts they lye 306 *B*

In what Cases it lies 306 A, 307 E
Where a Prohibition lies in it 307 C
For what Chasers 307 F, G, 308 H
For the Heir in tail 308 H
The Heir shall bring it though he hath not the Land 308 K, L
After a Disseisin 308 L
Where bailment pending the assize is a good ease 308 M
The wife shall have it after Divorce ib. A

Devise.

The Writ of Ex gravi querela lies to execute the Devise of Lands in Fee or in Tail, where Lands are devisable by customs 441 L
Where Lands or Goods in London are devised 443 H

Dieu clausit extremum.

What it is, and where it lies 558 K, M, 559 C, D, F
The form of it 558, 559, 560 H
Upon the death of an Idiot 560 H
It must be executed by the Escheator ib. A
It must be sued out within the year 561 C
For the wife where she husband is outlawed 563 D

Disclaimer.

It lieth for the Tenant in a Writ of Customs against the Demandant 328 H

Distrit.

The form of the Writ 211 E
The Process in it 221 D
In what Cases it lies 211 E, 212, 215, 216, 217, 218
Where to be brought 217 I, 219 G
No *Vi & armis* in it 211 E
For suing Writs in the name of Attorney without leave 211 E, 212 A, 221 B
Upon a Forgery 212 B, C, 218 D, 220 K
Against an Attorney for Covin 213 E, 219 I, 221 A
For personating another, and confessing the action 214 A, 217 H, 220 A, 221 B
Where a Protection is purchased for one which never was beyond the Seas 214 B
Against the Sheriff for a false Return 215 C, 216 B, 217 D, G
It lies for levying a Fine of Ancient Demesn Lands 216 A, 218 P, 219 E
For Baron and Feme 216 C, 218 B
For embesling a Writ, 217 E
For not performing a Bargain ib. E
Where a Summons is returned where *de facto* there was none 216 B, 217 D, G
Where an Attorney may plead *Non fum informatus* 217 I
It lies upon a warranty 217 K
It lies for suing a Troublesome Action 218 N
It lies for the Heir 218 Q
For the Executors 218 R

For the Voucher 218 A
The Summoners and Pledges to be examined 218 C
It lies for him in Reversion 218 D, 279 E
It lies against the King 279 F
For suing out Execution without a Summons 279 H
It lies against an Escheator 221 D

Distress.

Before the Statute of the 18 E. 3. the right of Tithes were determined in the Temporal Courts, but that Statute hath altered the Law 67 F
For Sheep, Calves, Kine, Milk, &c. how payable, and when 115 G
Of what Things Tithes shall be 118 E, 119 G

Disseisin.

Where a Usurpation shall not hurt the Disseisee 80 F
A Corporation may be a Disseisor 346 A
When an Infant or Feme shall not be Disseisors 398 G
When a man shall be said to be a Disseisor ib. G

Distress.

The Lord in Auncient Demesn not to distrain his Tenant after a *Monstraverunt* 32 B, C
Although for the Kings Debt, lies not against Tenant in Dower 102 G
For two Distresses a Recaption lies 158 E, 159 F, G
For the purpart of Coheirs 183 E
Cattel distrained ought not to be impounded in an unknown place or forreign County 198 N, O 199
It must not be in the Kings Highway 199 A, 386 E
What Cattel are not distrainable 199 B, 386 E
Where upon Distresses a *Pone fracto* lies 221, 222, 223
What things are distrainable 224 B
Upon a Distress taken, and a Rescous made, see what remedy 223, 224 225, 226
The Lord may distrain for suit to his Mill 271 M
He may distrain those that surcharge the Common 276 D
For not repairing a Bridge or Wall 283 E
Where a writ of Mesn lies upon it 300 M, 301 N
A writ of Annuity will not lie after a Distress 339
Where upon a Distress by the Lord the writ of *Exoneratione Sectæ ad Curiam Com. vel Baron.* lies 352 A, 353, 354, 355
Distress must not be made upon Glebe 347
Where several persons are to do one Service, if the Sheriff distrains any one of them he may have his writ of *Deonerando pro rata portione* 501 B

Dote Assignanda.

The form of the Writ, and for whom, and in what cases it lies 311 B
Oath must be first made in Chancery

Chancery 582 D, 586 C
Security to be given that she marry not without License 583
Where Lands are holden of a Subject 583 A
She may have a *Dedimus* to take her Oath 584 C
Where she must bring her writ of Dower against the Heir 585
The Heir may (upon surmise that too much is assigned for Dower) have a new Inquisition, and the matter re-examined 585 B

Dower.

Tenant in Dower shall not be distrained for her husbands debts 102 G, 335 Q, 336
Tenant in Dower may have a *Secta ad molendinum* 272
What her *Quarentine* is, and what remedy for it 360 E
She may bring a writ of Escheat 322 M
The forms of the writs *Unde nihil habet* 330
Where it lies, and for whom 329 E, 330
In what Courts 330
Of what she shall be endowed 330, 333 E.I,K, 334
It may be of a possession in Law 332 D
Nor of her own Land 333 E
Nor when the Estate is determined in her husbands life time 333 F,G
It shall be of a Tenancy in Common 333 I
At what age she shall have it 334 L
Upon an Exchange *ib.* N
Where she may endow her self as Guardian in Socage 334 N
Nor of a Reversion *ex assensu Patris* 334 A
For the use of the Mesn 334 C
The Heir must assign it 334 D, 360 E
Where she elopes she shall lose it 334 H
Where the husband is attainted 335 I
Lies not where there was a Joyntenancy *ib.* K
Ex assensu Patris, Matris, & Fratris *ib.* L, M
Ad usum Cameræ, ad usum Ecclesiæ *ib.* M N
Of Gavelkind Lands *ib.* O
Free Bench *ib.* P
She may bring a *Quod ei deforceat* 346 B
Where she may have her writ *pro Exoneratione Sectæ ad Cur. Com. vel Baron* 353
Tenant in Dower of *Capite* Land must not marry without the King's License 388, 389

Droit de Dower.

VVhat it is, where to be sued, and how to be directed 15 E
How to be removed, and into what Courts 15 E, 16
VVhen to be brought against the Feoffee 16 F
VVhen, and how against Tenant in tail *ib.* A
VVhen to be brought in the Heirs Court *ib.* F, A, 17 B
How, and where to be brought against the Lessee for life 17 B
It lies for part of her Dower *ib.* C
If she loseth her Land by default

lands in a Prescript, yet she may have this writ 17 D

But if she loseth it by action tryed, she hath no remedy but Attaint 18 E

This writ lies for a Moiety, according to the usage of Gavel-kind ib. K

Dyoit Clofs.

What it is, and in what cases it lies 23 F, 24 M

It lies for Common of Pasture, stopping of a way, &c. 24 H, I, K, L

The Entry of the writ ib. N

The form of it, and proceedings thereupon 24 N, 25

Protestation to prosecute 24 N, 25

Where the Lord is a party 26 E, 27

Voucher or Forreign Plea 29 G, H

Dyoit in the *debet* and *solet*, where it lies 273 H

Dyoit de Garde.

The forms of the writ 209 C, D, F, H

Where it lieth, and for whom 308 B, 309 D, H, 318, 319, 320

Where it may be sued 309 F

It may be removed ib. G

For Guardian in Socage 309 H, 310

Upon a Feoffment by Collusion 317 K

The wife within Age shall be a Ward 318 C

The womans Age ib.

The Judgment 320

Dyoit Patent.

The form of the writ for Lands, &c. 2 E, H, I

For Land-rent, and passage over the River of *Thames* 3 L

For a Knights Fee 3 B

Quia dominus remisit Curiam 5 A

For what it lies, and by whom to be brought 1 B, C, D, E, 30 C, D

To whom to be directed 3 F, H, 5 A, 4 E

It may be brought against several Tenants 4 D

Dyoit Patent.

It may be brought in the Kings Courts by the Lords License 5 F

The form of the License 5 A

The form of a writ to compel the Lord to hold a Court, that he may proceed upon his writ of Right 6 E

Where Right is delayed or denied, the party grieved may remove his Plaint by a Tolt 7 F

When to be removed, by whom, and to what Courts 6 F, 7 A, 8 B, C, D

Upon joyning the Mise a Prohibition lies, until the Justicer in Eyre come into the Country 9 E, F

How to lay the Seisin in a writ of Right 10 D

Dyoit en London ou autre City.

Who may have this writ, and to whom to be directed 12 B, C, D, 13 F

How to proceed if the Tenant voucheth a Forreigner 13 E

What

What Writs lye in *London*, and how to be directed 14 *G, A*

A recovery in a real Action in the Common Bench is good, if the Major and Sheriffs do not demand Conisance 15 *D*

Dyer be Matiuadbli parte, V. &c. by the Matiuadli parte.

Dyer D'abbetsen.

For whom it lies 66 *B,C,D*, 67 *H*, 68 *B,C,D*

Espleces must be alledged 66 *B*

Tryal by Grand Assise 66 *C*

De mediocate Advocationis 68 *B*

Tender de Dener dank 68 *D*

Dum fuit infra ætatem.

The form of the Writ 426 *H, I*

In what Cases it lies 426 *G,I* 427 *B,D*, 449 *D*

Dum non fuit Compos Mentis.

The form of the VVrit 449 *C*

In what Cases, and for whom it lies 449, 450

VVhere it is a good Plea in Debt upon Bond 438

For the Heir 450 *B*

Ejectione firmæ.

THE form of the VVrit 489 *G*, 490

In what Cases, and for whom it lies 489 *F*, 490 *I, A,B,C*

VVhat shall be recovered in it 490 *H*

Ejectione Custodiæ.

The form of the VVrit 311, 440

VVhat it is, and when it lies 310 *L*, 439, 440

VVhen for a Guardian in Soccage 311 *C*

VVhat shall be recovered in it 439 *T*

VVhat is Traversable in it 441 *K*

Electum De un Verderor D'un Forrest.

The form of the VVrit 366 *C*

VVhen it lies, and how to be chosen 366 *C*

VVhere he may have a VVrit of Restitution 366 *D*

De Un Evesque, Abbot, Prior, &c.

How it shall be, and by whom, and when 376, 377

The Election of Archbishops, and Bishops, &c. 378 *A*

Elegit.

VVast lies against him 130 *H*

Tenant by Elegit may bring an Assise 396 *G*, 397

May have a Rediseisin 421 *I*

The form of an Elegit upon a Recognisance 588 *B*

In what Cases it lies, and upon what grounded 588 *B*

VVhen the Year and Day is past there must be a *Scire facias* before Elegit 588 *C*

Executors cannot sue out an Elegit

legit without a *Scire facias* 291

Embracery.

A *Capias tantum* will lye against him 389 *A,C,D*
What he is 380 *B*

Enditment.

Lies against him that takes the Goods and Lands of a person protected by the King 203 *B*,204
Vide in Titulo Oyer and Terminer 243
Usque 251
For not repairing a Bridge or VVall,&c. 281 *E*, 282 *G*
An Endictment lies against forcible entry into Land, which a man hath a title to 551 *H*

Enfant.

If he commit Felony at fourteen years of age, he shall be hanged 449 *D*
He shall sue *per prochein Amie*, but defend *per guardien*. only 59 *H*
Shall not remove his Guardian 59 *K*
But by writ he may 59 *M*
Ought to present within six Months 76 *T*
VVhere he shall be ousted by Usurpation 78 *M*
May bring his *Audita Querela* upon a Statute acknowledged by him 230 *K*
May bring an Account against Guardian in Soccage 260 *A, B*, 257 *B*
Account will not lye against him 261 *D*
Shall be in ward, though married 318 *G*,319 *M*
An Infant at twelve years old, shall be bound by Covenant to serve in Husbandry 384 *D*
His command to enter shall not make him Disseisor 398 *G*
VVhere he shall have a *Dum fuit infra Ætatem* 426, 427 *K*, 449 *D*
VVhat acts done under age are avoidable, and what not 449 *D*

Entre ad Communem Legem.

VVhere this writ lies, and for whom 109 *D*, 110 *F*, 488 *G*

Entre ad Terminum qui præterijt.

The form of it 447
In what Cases, and for whom it lies 446,447,448,482 *G*
In the *Per*, *Cui*, and *Post* 446 *E*, 447
The Aunt and Neece shall joyn in it 448 *H*

Entre ad Communem Legem.

The form of the writ 461 *H*, 462
In what Cases, and for whom it lies 461,462
It may be in the *Per*, *Cui*, and *Post* 461 *A*

Entre in le Quibus.

The form of the writ 424 *C*, *D*, 425
In what Cases it lies 424, *C*, *D*, *E*, *F*, 425 *G*, *H*, *I*, *K*, *B*, *D*
Count, how it shall be 424 *E*, 425 *A*

For

For a Corporation 424 F
Where the Entry in *le Poſt* lies 425 C

Entre in Caſu Proviſo.

The form of the Writ 456, 457
In what Caſes it lies and for whom 456,457,458
In the *Per, Cui*, and *Poſt*. 456 M
Where the Aunt and Neece may joyn in it 458 D

Entre in Conſimili Caſu.

The form of the Writ 458,459, 460
In what caſes and for whom it lies 458,459,460,488 G

Errat.

When it lies, and where 44 D, 47 K,L,M,N, 48 A, 54 D, 53 B
The proceedings and aſſigning Errors upon it 44 E, 44 G, 45 A,B
The Record it ſelf muſt be removed 44 F
Quod coram vobis reſidet. 44 G
If Tenant for life loſe by default, he in Reverſion ſhall have this Writ 45 C
Diminution certified upon a writ of Error 54 A, B
Error in Law, how to be aſſigned 45 D
VVhere the Tenant admits the writ to be good, he ſhall not take advantage of it in Error.
Error ſhall not be aſſigned for any thing which was for a mans advantage 46 F
Upon a Judgment in the County Palatine of *Durham* 46 G
It lies againſt the King, and the proceeding upon it 46 H
For a fault in the Proceſs in the King's Bench, or Common Bench 47 I
It lies for an Executor or Adminiſtrator 47 N
Upon a Bill of Exceptions 47 A
Upon a Judgment in *Ireland*, where to be brought 48 E, 53 B
For making an Attorney, where it ought not 48 D
Upon an Aſſiſe in the Country 54 D, E, A, B

Eſcheat.

Writ of Eſcheat returnable out of *London*, into the King's Bench 14 B

Eſcape. Vide titulo Sheriff.

The form of the Writ 321 E, F
In what Caſes, and for whom it lies 320, 321 H, 322 M
In what Caſes it will not lye, but only in intruſion 320 B
It lyeth againſt the Diſſeiſor 321 C D
The King ſhall have it in *London* 321 G, 322 M
In what Courts 321 G
For the Lands of a Felon 321 H
It lies not after Homage accepted 323

Eſchetor.

May make an Attorney to make their proffers 61 V
May have an under Eſcheator 221 C
The writ *De Reſtitutione Temporalium*, muſt be directed to him 396

Eſtrepmenti.

The ſeveral ſorts of the Writs, and their ſeveral Natures 135 *U, X, Y,* 136 *D*
Directed to the Sheriff *X* 135
Or party 136 *T*
It lies where damages are to be recovered 135 *T*
The writ to the Sheriff 135 *A* 136
Who may ſue it 135 *B*
It lies in an Aſſiſe and real Actions 136 *C*
It lies in a writ of Right 136 *E*
Who ſhall be puniſhed for it, and when 131 *G,H,* 137 *K*
It lies upon a *Scire facias* 137 *I*
Upon a writ of Waſte 137 *N*
Upon an Attaint 137 *O*
Upon a *Juris Utrum* 137 *P,* Q
Between Verdict and Judgment, and before Execution 137 *N,K,* 136 *C*

Etate Probanda.

Where this writ is to be ſued 562
When to be ſued out 563 *A*
The form of it 569 *D*
The form of the Writ commanding the Sheriff to Impanel a Jury 569

Excommengement and Excommunicato Capiendo.

Not to be iſſued forth until a Certificate made by the Biſhop into Chancery 140 *N*
Or the Vicar General *ib.*
After ſatisfaction and Certificate made, then this writ ſhall iſſue forth to abſolve him 140 *A*

Execution.

Execution of a writ of Diſceit 215 *B,* 216
When a Recovery is in an inferiour Juriſdiction, the Party may remove the Record into the King's Bench, and have Execution upon it 545 *B,* 546, 538 *B*

Execution ſur Statute Merchant.

The Mayor ought to certifie it into Chancery, under his Seal 289 *C*
If he refuſeth how compellable *ib.*
How to be certified 290 *E, F*
For the Executors 290 *B*
The form of the Writ of Execution 290
Where returnable 290 *H*
Lies before all the days are paſt 290 *I*
The Form of the Writ againſt a Clerk *ib.*

Sur Statute Staple.

The form of the Execution upon it 291 *D*
In what Caſes it lies *ib.*
What the Sheriff may do upon it 292
The Liberate upon it *ib.*

To a County Palatine.

Where, and in what Caſes it lies 292 *A,* 293
The form of the Writ 293
Certificate into Chancery 293 *B*
Upon the removal of the Chancellor 293 *B*

Upon a Recogniſance in the County before the Sheriff.

Where it lies 294
The form of the Writ *ib.*
When the Recogniſance to be made 294 *A*

a Attachment for not doing Execution 295 *B*
Except the Recognitor deny the Debt *ib.*
A Prisoner in Execution must be allowed bread and water *ib. C*

Executio Judicii.

The form of the VVrit 43 *C*
Where it lies, and in what Cases 42 *A*, 43 *B*
To whom to be directed 43 *B*

Executors and Administrators.

Where they may bring their Writ of Trespass 193 *E*, 203 *M*
An Action of Account lies not against Executors 257 *C*
They may bring debt for Arrears of an Annuity in Fee 266 *L*
When they may bring debt for Rent 267 *E*
May have Execution upon a Statute 290 *B*
May bring a Writ of Covenant 323 *D*, 324 *F*
A *Certiorari* lies to them to certifie the conusance of a Fine 328 *B*
Executors in *London* compellable to bring in the Will 444

Ex gravi Querela.

The form of the VVrit 442
What it is, and in what Cases it lies 441, 442, 443, 444, 445, 446
To whom to be directed 442 *C*
The Count upon it *ib. C*

Ex parte talis.

The forms of it 287 *G, H, I*
For whom, and in what Cases it lies 286 *F*
Where returnable 287 *H*, 288 *A*
Where upon putting in of Sureties 287 *I*, 288 *A*

Error in London.

From what Court it comes, and in what Court and Cases it lies 49 *N*, 51 *E*, 52 *G*
To whom to be directed 50 *A, B*
The form of the Writ *ib. C*
A *Supersedeas* thereupon to the Sheriff 51
Si non omnes in the Commission 51 *E*, 52
A writ to hinder the party from removing his Goods 93 *B*

Pro Exoneratione Sectæ ad Curiam Baron.

The form of the VVrit, and where it lies 352 *A, B*, 353, 354, 355
To whom to be directed 354
Attachment lies against the Lord for proceeding after it 356 *D*

Faits & Grants.

How far the words *dedi & concessi* in Deeds shall make a warranty 298 *H*

Faux Judgment.

It lies upon Judgment given in a writ of Right close 25 *A*
The form of the writ 40 *B*
In what Cases it lies 40 *I, A, D* 41 *F*, 42 *H, I, K, L*
Copyholder shall not have it upon a Judgment given against him 39 *H*, 40

It will not lye but where there are Suitors 40
The proceedings upon it 41 E
For Baron and Feme 42 H

Fealty.

The new elected Bishop &c. must do Fealty to the King for his Bishoprick 376 B, 378
When to be certified, and where 378 B,C
It is not recoverable in a *Cessavit* 465 I

Fee-simple.

When to bring his writ of Right 1 B,C,D

Feoffment.

The Feoffor shall keep the Charters 307 G, 308 I
By an Idiot, or *Non sane memory* 450 E,F

Fines.

Forms of the Writs of Covenant to levy Fines 326 F, 327, 329 G
The form of a *Dedimus* to take a Fine 326 G
For a Judge of the Kings Bench 327
For several Writs of Covenant *ib.*
How to be levied for him in Reversion *ib.*
Quod Juris clamat, per quæ servitia 327,328
A *Certiorari* lies to certifie the Conusance 328 B
A Fine for Lands in *Capite* 339 C

Fines le Roy.

Upon the writ *de Securitate Pacis* 178 A
What Fines are paid upon suing out of Writs 212
The Jurors in Attaint shall be fined and imprisoned 242,243
When the Defendant pleads *Non est factum*, and it is found against him, he shall be fined 368 P

Forcible Entry.

What it is, and where the writ lies 550 C,D, 552 B,C
Who only can have it 551 E
The form of the writ 551 F, 552 F
It lies not where a man hath a title 551 H
What shall be recovered in it 552 A,B,D
What shall be a good plea *ib.* D
Where the Defendant shall pay treble damages *ib.*

Formedon in Reverter.

Where it lies 320 A, 487 E, F, 488 G, A,B, 489 E
Where the Lord shall have it 428 B
The form of the Writ 487 E, F, 488 G, A, B
In the Count the Esplees must be laid in the Donor and Donee 489 C
Where the eldest Son is to be mentioned, although he was not seised 489 D
Where he is not to be mentioned 489 D

Formedon in Descender.

Where the Heir shall bring it upon an alienation by the Husband of his Mother 428 B
In what cases, and for whom it lies 471,472,473,474,475
For the Heir of a Parcener or Tenant in Gavelkind 476 B
Of what, and against whom it lies 471 L,A,B,472,473, &c. 481 B

The form of the writ, and how the Heirs in tail are to be named in it, 472 *D*, 473 *A*, *B*, *C*; with the Pedigree 474 *D*, *E*, *F*, *G*, *H*, 475 *I*, *K*, 478 *B*, 479

For the Heir of a Parcener, or Gavelkind Tenant 476 *B*

The Aunt and Neece may joyn in it 474 *G*

The Grantee of the Reversion may have it 475 *A*

Where it lies for the Heir of a Coparcener and Tenant in Gavelkind 476 *B*, 477, 478

The form of the writ 476, 477

The *Formedon in Descender*, called *Infra tal tenuit*, see in tit. *Infra tal tenuit*.

Forests and Chases.

When and by whom the Verderors are chosen 366

Fresh Force.

For whom, and where it lies 15 *C* 28, 29

Protestation to sue in the nature of what Writ he will 15 *C*

Gard, See tit. **Liberty.**

One in ward to the King shall not during his wardship do suit and service to any Lord 352 *A*, *B*

Guardian in Socage.

May grant the wardship over to a Stranger 319

Mave have a *droit de Gard* 309 *H*, 310

Account lies against him 257 *B* 260 *A*, *B*

Gavelkind.

The writ of *Nuper obiit* lies betwixt Coheirs in Gavelkind 437 *C*

A writ of *Mortdauncestor* doth not lye between them because of the Privacy 436 *L*

Where the writ of *Infra tal tenuit* lies upon an Alienation made by one of them 480, 481, 482

Garranty de Charters, See tit. *Warrantiæ Chartæ*.

Garranty de Jour. See tit. *Warrantia diei.*

Giants, vide tit. **Faith.**

Giants le Roy.

How the King must grant an Annuity, otherwise it is void 341 *L*

The Grant of a Stewardship 597

The King's Covenant by Indenture upon borrowing of mony *ib.*

Grant of the next Avoidance 597. 593

A Grant of a Pension to a Chaplain *quousque*, &c. 598 *A*

A Grant of a Pardon to the King's Enemies *ib. B*

Glebe.

The Parson is not to be distrained upon his Glebe, or in the High-way 386, 387

Heir.

Debt lies against a man as Heir 264 *B*, *C*, 266 *I*

But debt upon Bond, as Heir, will not lye 266 *I*

Where the Heir shall bring Debt *ib. M.*

Where he shall bring his *Quod*

permittet 276 A
Where he must acquit the Mesn 303 T
When the Heir in tail shall bring detinue of Charters 308 H
He shall have the Charters, and not the Executors 308 I, K, L
When, and where he shall be in ward *See from fol.* 309 *to* 320
Where chargeable in a writ of Annuity, and where not 349 F
During his wardship he shall not do suit and service to any Lord 352, 353, 534
Where he shall have his *Sur Cui in vita* 428 B
Where he shall have his Mortdauncestor 433, 434 H, 435 A, B, E, F
The Heir of one of *Non Jane memory*, may have his writ of *Dum non fuit compos mentis* 450 F
May have his *Sur cui ante divertium* 454 K
May have a *Causa matrimonii prælocuti* 455 C
May have a writ of *Entre in casu proviso* 457 A
May have a writ of *Entre in consimili casu* 460 B, D, 463 F
Where he shall have a writ of *Entre ad communem Legem* 461 A, B, 462
Shall have a writ of *Contra formam collationis* 469, 470
Where he shall have his Formedon in Descender 471
Where the Heir in tail shall be liable to pay the King's debt 481, 482, 483

Hæretico comburendo.

Where this writ lies, and in what Cases 394 B
The form of it ib.
Upon what conviction, and before whom 395 D

Homage, & Homagii respectuando.

Homage Ancestrel doth of it self imply a warranty 297 F
Acceptance of Homage is a good bar to a writ of Escheat 323
It is recoverable in a writ of Customs and Services 338 L
It is not recoverable upon a *Cessavit* 465 I
Where the writ *de Homagio respectuando* lies 563 A, 594 A
The form of it ib.
Where it must be done by a woman 569 F

Homine Replegiando.

What it is, who may have it, and when 148 E, F
The forms of the writ ib. F
Where the party is claimed to be a Villain 149, 151 F, G, B
So if the Defendant claim the Plaintiff for his ward 149
To the Constable of the *Cinque Ports* ib. A
To the Keepers of a Forest 156 B
Offences in the Forest ib. B, C, D, E
To a Park within a Forest ib. E
Recognizance how long to continue 151 A
Upon an Esloyner returned by the Sheriff a *Capias in Withernam* shall issue forth to take the Defendants body, although a Peer, and upon a *Non est inventus* a *Capias* against his goods 151 C, 152

Idiot.

What perſon ſhall be taken to be an Idiot 519 *B*

In what Caſes the writ *de Idiota inquirendo* lies 517 *A*

The form of the Writ, and to whom directed 517 *B*, 518 *A*

The Idiot may, after Inquiſition found, have a writ to come into Chancery, or before his Majeſty in Council, where the buſineſs ſhall be re-examined. The Heir of an Idiot, if he be at full age, may ſue our Livery 567 *D*

Idemptitate nominis.

In what caſes, and for whom it lies 591 *E*

The form of it *ib.*

To the Sheriff and Eſcheator *ib.*

To the Barons of the Exchequer 592 *A*

To whom to be directed 593 *B*

It lies where the Proceſs is upon an Indictment 593 *C*

Impriſonment.

Where the writ of Treſpaſs and Falſe impriſonment lies, and the form of it 192 *K*

Indicavit.

What it is, where it lies, and for whom, 66 *E*, 67 *F*, *G*, 100 *B*, 101 *E*, *D*

The form of a Writ of *Indic.* 101

It muſt be ſued before Judgment given *ib.*

It lies not until a Libel exhibited in the Spiritual Court, &c. *ib. D*

For what it lies *ib. D*

Induction.

Induction is a Temporal Act 106 *H*

Inſimul tenuit.

The form of the Writ 480 *A*, *B*, 481

In what Caſes, and for whom it lies *ib.*

Upon what Alienations 481 *C*, *D*, *E*, *F*, *A*

How the Count ſhall be 481 *A*

Intruſion de Gard.

The form of the Writ 313 *B*

What it is, and where it lies 313 *A*, *B*, *C*, 314 *D*

It lies againſt the Heir 314 *D*, *E*

Intruſion.

Where it lies for the Lord upon an Eſcheat 320 *B*, 321

Where it lies, in what caſes, and for whom 451 *E*, *F*, 452, 453

The ſeveral forms *ib.*

Aunt and Neece may joyn in it 452 *H*

Lies only for him that hath the Fee ſimple 453 *D*

Joyntenants, and Tenants in Common.

Cannot have a *Quare Impedit* againſt each other 76 *V*

Waſte lies betwixt Tenants in Common 131 *D*

Where one Tenant in Common may bring Treſpaſs againſt the other 202 *H*

One Merchant may bring an Account againſt his Companion 258 *D*, *E*, 261 *G*

A writ *de Reparatione faciend.* lies between them where they do not agree to repair 281, 282, 361 *B*

The wife of a Tenant in Common ſhall be endowed 333 *I*

But the wife a Joyntenant ſhall not 335 *K*

How they ſhall do ſuit and ſervice 356 *D*, 361 *B*

Where the writ of Contribution for Repairs lies between them 281, 282, 361 *B*

Where they purchaſe of the King by Licenſe, the other ſhall have an *Ouſter le main* 570 *G*

Journeys-Accounts.

It lies in an Assize of *Darrein presentment* 70 C

Justice del Peace.

May commit Vagrants to Prison 374 B

Judgment.

Judgment in Attaint 237 H, 242 L

Justicies.

The form of a *Justicies* in Account 257 C, 258

In Debt in the County-Court 263 H

In setta ad Molendinum 271 A

In *Droit de Gard* 369 F

In Dower *Unde nihil habet* 330

In a writ of Customs and Services 337 B

In a writ of Annuity 339

Juris utrum.

For whom and in what Cases it lies, and when 109 R, A, B, C, D, E

A Parson or Vicar may have it against those which are several Tenants 110 M

The form of it ib. N

Two Prebendaries may have it 111 O, 432 L

Where there are Moyeties ibid. P

Upon Alienation with warranty ib. A

For the Vicar against the Parson for the Glebe ib. B, E

Bar by Judgment, by Default 111 D

Recovery in *Cessavit* no Bar 112 F

For the Chaplain of a Chauntry ib. G

How to be named in the writ ib. I

Where the Jury to be taken, and what to enquire of 112 K, L, M

Laches.

May be in an Infant and Feme Covert 76 T

Lapse, vid. tit. Presentment.

If Infants or Feme Coverts do not present within six months there will be a Lapse 76 T

Upon a Resignation it cannot be until notice 78 H

Or upon refusal for Non-ability, &c. ib. I

Labourers.

The forms of the Writs upon the statute of Labourers 372 B, 373, 374

In what Cases it lies, and for whom 372, B, 373 C, 374, 375

He that serves in the winter must serve in the summer 374 A

Who may be retained Servants ib. C, D, E, N, O

What Retainers are good according to the Statute 375 F, H, K

Who shall be compelled to serve ib. I

What are good causes of departure ib. L, Q

Leases, Lessor, Lessee.

What remedy the Lessee hath to recover his lost possession 439, 440, 441

Where the Lessor shall have his *Ad terminum qui praeterat* 446, 447

Leet.

The form of the writ to discharge a man from coming out of one Leet into another 397 B

Attach-

Attachment lies against the party that distrains after it 358
Who are not compellable to come 358 C, 359 B, C
How often compellable 360

Leproso amovendo.
What it is, and where it lies 520 D, 521
The form of the writ 520 E
For what Lepers only it lies 521 G

Levari faciar.
The form of it, and in what cases it lies 586
When is ought to be sued 587 G
A *Sicut alias levari faciar*, where it lies *ib.* H
Directed to the Bishops against a Spiritual person *ib.* A
To the Sheriff, where he hath purchased Lands 588 B

Libertate probanda.
The form of the writ 172, 177
Upon what it lies, and how to count thereupon 173 G
Where to enter his Plaint *ib.* A
It must be removed before the Justices 173 A, B, 174 E
Two may joyn in it 174 C, 175
Where he shall be enfranchised 174 F, G, 175 A, 176
Abatement of the writ 175 H
The Process *ib.* N
The form of the writ to bring the King's Villains back to his Mannor 176, 177 E

Libertatibus allocandis.
What it is, and where it lies, and for whom 109 B
The form of the writ 509
May be sued to the Justices of the Forest 510
It lies for a Corporation 509, 510

Livery.

The Heir shall have his Livery as well upon a Commission, as a *Diem clausit extremum* 562
Before Livery the Heir shall have a writ to the Escheator to prove his age *ib.* E
The form of it *ib.*
VVhere the Ward dies, and his Heir is within age 565 E
The form of it *ib.*
Where the Heir of the King's Tenant in Socage ought sue out his Livery 578, 579, 666 G
For the Heir of an Ideot 567 D
How, and when the Heir shall sue out his Livery 568 E, 580 C
That Coparcener which first comes of age shall sue out Livery 568 F
Where the Heir shall be in ward to the King and a Subject at one time *ib.* B
Where *Livery post mortem Patris & Matris* lies, and for whom 570 I
The form of it, and to whom direct *ib.*
The form of the writ of Livery after the death of Tenant *per la Courtesie* 570 A, 571, 572
For whom, and in what Cases it lies 570, 571
The form of the writ of Livery after the death of Tenant in Dower 572 B
After the death of Tenant in tail and for life *ib.*
For the Heir in tail 573 A
For Lands by Petit Serjeanty *ib.* B
For the Aunt and the Neece to make Partition 574 A

To

To make void a former Livery 375
A writ of Livery and Partition to the Escheator upon a Partition made in the Chancery 576
After the death of Tenant by the Courtesie 578 B
For the Lands in Socage ib.

London.

Where Wills made by a Citizen of *London* shall be proved 443 H, 446 A
A writ to compel the Executors to bring them in 444

Mainprise.

BAil must be put in, body for body, upon allowing an *Audita querela* 232 F, 557 D
It may be put in for him that sues an Attaint 234 D
Where the Demandant in an Assize must find Sureties 395, 396
What the writ of Mainprise is and where it lies 553 G, 554 C
The form of it 553
Where a person of good fame is accused by an Approver 555 D E
For the Accessory, until the Principal is convicted ib. E
Where a Felon is in custody by the King's Commission, he shall have it upon puting in Bail in Chancery body for body ib. F
Upon an Indictment before Justice of the Peace 556 G, H, I, K, 556 C, 557 F
It lies upon an Appeal of Robbery 556 A
What persons are not bailable 556 B, 557 H, E
For the Conizor of a Statute Merchant where the mony is paid 557 D
It lies not where a person is condemned in an Action ib. E
Two Justices of the Peace may bail a Felon ib. F
The Marshal of the King's houshold cannot bail his Criminary Prisoners ib. I

Mandamus.

The form of the Writ 561
It lies where the King's Tenant in *Capite* dies, and no writ is awarded against the Heir within one year after his death ib. B

Marshalsea.

The Jurisdiction of the Marshal's Court, and what Actions only, and against whom are determinable there 535 B, C
A Prohibition to it 536
Where the Plea is discontinued by the King's removal ib. D
Affirming the Jurisdiction of that Court shall be no Estoppel 537 A

Master and Servant.

Where the Servant is disturbed, and the Master shall bring the Action 202 E, G
Where Cattel are rescued from the Servant, the Master shall bring the Action 221 K, 224 I
Account lies not against an Apprentice, but it lies against a Servant 262 D
Where the Servants Contract shall bind the Master 265 G
The punishment of the Servant that will not serve his Master 269 B, 372, 373
See the Exposition and Writs upon the Statute of Labourers 372, 373, 374, 375
What

What Covenants shall bind Infants, and other Servants 374 *D, E*
What is a good cause of departure for the Servant 375 *K, L*

Melius Inquirend.
In what cases, and for whom it lies 565 *D*
The form of it *ib. A*

Mesne.
The form of the Writ 301 *N*
Only one Escuage shall be paid for Lord Mesn, and Tenant 186 *K*, 187 *D*
The Process in it 304 *A, B*
For whom it lies, and in what cases 300 *M*, 301 *N*, *A, B, C, D*, 302, 303, 304
In what Courts 301 *N*
It may be removed *ib. A*
The causes of acquittal 301 *A, B, C, D*, 302 *F*, 303 *T*
Where he shall not recover damages 302 *E*
Where damages shall be recovered *ib. H*
Where against him in Reversion 302 *G*, 303 *M*
What is a good Bar in it 302 *H, I*
It lies for husband and wife *ib. I*
Against the Heir *ib. L*
For the Tenant 303 *M*
Where a *Distringas ad acquietandum* lies *ib. R, S, V*
Fore-judger 303 *V*, 304 *A, B*

VVho shall have the wardship of the Mesn 319 *K*

Medrata Misericordia.
The form of the Writ 167 *A*, 170 *B, D*
VVhat it is, against whom it lies, in what cases, and out of what Court it issues 167 *A, B, C*, 170 *B*
The Amercement must be afferred 168 *G*, 169 *K*, 120 *D*
VVhy *Misericordia* 168 *H*, 169 *K*
VVhere divers Defendants 168 *I, G*, 169 *K*
Estreats 169 *K, A*

Monstraverunt.
The form of it 31 *G*
In Account 259 *H*
The nature of it, in what cases, and where it lies 30 *D, E*, 31 *F*, 32 *D*
It lies in Account 259 *H*
The Lord not to distrain after a *Monstraverunt* 32 *B, C*
Count upon the *Monstraverunt* 34 *A, B*
There must be Certificate of it out of Dooms-day Book 35 *C, D*
The form of the Certificate *ib. C*

Mortmain.
Lands cannot be alienated in Mortmain without a writ of *Ad quod dampnum* 493, 494
In what cases there may be alienations in Mortmain, and where not, and the manner thereof 493, 594, 495, 496

Nativo habendo.
The form of the writ 172 *E*
VVhere it lies, and for whom, 171 *A, B*
The writ *De libertate probanda* is a *Supersedeas* to this writ 172 *D*
VVhat the Sheriff may do upon this writ 171

Ne admittas.
The form of it 83 *G*

What it is, and where it lies, and for whom 83 *F, H*

It lies as well for the Defendant as the Plaintiff *ib. H*

The writ against *Ne admittas* 84 *G*

Negative and Affirmative.

Witnesses cannot prove a Negative 235

Ne injuste vexes.

The form of the writ 21 *F*

In what case it lies, and where 21 *C*, 25 *C, D*

It is always Auncestrel 22 *G*

The Count upon it *ib. H*

The Defendants defence and Count *ib.*

The Mise shall be joyned in it 23 *A*

Nisi prius.

An Attaint lies upon it 233 *N*, 234 *A*

Where it shall be granted in a Certificate *sur Assize* 407 *H*

Not to be granted where the King is a party, without a warrant from himself or his Attorney 535 *A*

Upon Issues joyned in the King's Bench and Common Pleas 534 *E*

They must have an Associate *ib. E*

Nolle prosequi.

Nonsuit after appearance in Attaint is *peremptorie* 238 *D*

Non pausand. in Assisis & Juratis.

The forms of the writ 368, 369, 370, 374, 372

In what Cases it lies, and for whom 368 *A*

By whom it may be sued 368 *C*, 369 *D, E, A*, 370 *B*, 371

Who are not to be returned upon Juries 372

Non-tenure.

It is a good Bar in Attaint 237 *G*

Nuper obiit.

Where it lies 19 *G*, 437, 438, 439

The form of the writ 437

Non-tenure shall not abate *ib. D*

The Aunt and Neece shall not joyn in it 439 *B*

Voucher and View doth not lye in it *ib. B*

Nusance, vide **Assise de Nusance.**

A Proclamation against Nusance in Ditches and Rivers 392 *B*, 411 *D*

Where an Action of the Case lies, and where a writ of Nusance 393, 410 *G*

What writs of Nusance are Vicontiel 410

The form of the writ *ib.*

Where a *Quod permittat* lies for it *ib. G*

In what cases an Assise of Nusance lies *ib. D, E*

Lies not for Tenant for years *ib. G*

To cleanse the High-ways 411

Oath

Oath.

WHere requisite upon a writ *de Securitate Pacis*, and where not 177 *H*

The Sheriff shall give the Coroner his Oath 364 *N*

Obligation.

How the Bond for Surety of the Peace taken before the Sheriff becomes a Recognisance 181 *D*, 182

The taking of a Bond dissolves a Simple contract 268 *M*

An Obligation not made in writing upon Parchment or Paper is void 270

How the Clerk must be qualified that takes Obligations upon Statute Merchant 367 *E*

Office and Officers.

An Entry *in le Quibus* lies for an Office 426 *E*

Ordinary.

May bring Trespass for those Goods he hath to Administer as Ordinary 203 *N*, 265

Debt lies against him and his Executors 264 *D*, 265

Debt lies not for the Ordinary 265

Orphan.

The Mayor and Aldermen of *London* shall have the custody of the City Orphans 317 *G*

They may commit the custody to a Guardian 317 *G*

He may bring a *Ravishment de Gard* 317 *G*

Oyer and Terminer.

What it is, and where it lies 243 *B*, 246 *E*, *A*, *B*, *C*

The form of it 244, 248, 249, 251

Of what Offences it may enquire 247 *D*

The form when directed to the Sheriff 244 *A*

It lies against a Merchant Stranger, that seised the Goods of one of our Merchants 251 *C*

The form of the writ of Association to the Justices of Oyer and Terminer 244 *B*, 245

The form of the writ of *Si non omnes* 245 *C*

Association may be made after Association 245 *D*, 246

The death of any of the Commissioners, doth not discontinue their Commission 245 *D*, 246

It lies to bring Collectors of Toll to account 262 *F*

Where Trespass is done in the Confines of two Counties 246 *E*

For Trespasses 246 *B*, 248 *H*

It lies where Goods are taken out of a Ship broken by Tempest, and not wrecke 246 *C*, 247

And where Goods are wrongfully taken from any person, he may have it; and a Writ to the Sheriff to take the Goods into his custody 247 *F*

Against him that hunts in the Park of a Bishop in the time of Vacation 247 *G*, 248 *H*

Where the Sea-wall is broken and the Sewers and Gutters want scowring 248, 249

A Commission *ex parte talis* 251

Pardon.

BEfore a Pardon can be granted in a *Se defendendo*, the Record muſt be removed into the Chancery by *Certiorari* 548 *F*

Upon an Outlawry after Judgment in Aſſiſe the party cannot have his pardon without a *Certior.* 549 *G*

Parceners, & Partitione faciend.

See more in title **Formedon in Deſcender,** fol. 476.

VVhere they may have a writ of *pro Exoneratione ſectæ ad Curiam Com. vel Baron.* ſo long as they hold under the King 354 *A*, 355 *C*

VVhich of the Parceners ſhall do ſuit 355 *C*, 356 *E*, 362

VVhere they ſhall have a writ *de Contributione faciend.* againſt each other 361, 362

Cannot have a *Mortdaunceſter* againſt each other 436 *L*

But they ſhall have a *Nuper obiit* 437, 438, 439

They may joyn in a writ of Intruſion 452 *H*

The form of the writ 137 *R*

The Proceſs in it 139 *M*

One Parcener ſhall have a *Rationabili parte* againſt the other 18 *B*, 19, 20, 21 *A*, *B*

That one ſhall have Fee-ſimple, and the other entailed Lands or Goods 139 *M*

Two Coparceners of an Advowſon 72 *A*, *B*

The eldeſt Siſter ſhall have the firſt Preſentation 47 *M*, 76 *V*

Two Partners of an Advowſon where *Scire facias* lies after Partition 80 *C*

Uſurpation upon them *ib. D*

The form of the writ when they are in by ſeveral titles 138 *I*

In *London*, and to whom directed *ib. B*

For Joyntenants, or Tenants in Common *ib. C*

By Deed 139 *D*

It may be made in Chancery *ib.* 138, 139, 576

Of an Advowſon or Reverſion 139 *D*

Shall bind the wives, if equal *ib. E*

Upon a Partition in Chancery the Infant may bring her *Scire facias ib. B*

One Partner to have it one half year, and the other another, and held good *ib. I*, *K*

They may make it for life or years *ib. K*

Parſon and Vicar.

The Succeſſor of the Parſon may bring Error or Attaint 110 *G*

He ſhall have a Prohibition againſt his Partner to hinder waſte *ib. I*

What writs a Parſon may have, and *è contra* 110 *L*, *M*, 112 *H*, 386, 387, 390

Where he may bring Debt for Arrears of an Annuity, 261 *I*

Patron and Ordinary may in the Vacation charge the Church with an Annuity 341 *K*

Not compellable to come to Court-Leets or Torns 358 C
Clerks may be returned upon Juries 370 B
Muſt not be diſtrained upon his Glebe, or in the High-way 386
Is not to be elected into the Office of a Bailiff 390 B
Shall not be charged for their Spiritual Goods to Fifteens 391 A
Spiritual perſons ought not to pay Toll, Pontage, &c. 505 F

Perambulatione faciend.

The form of the Writ 296 E
VVhere it lies 296 D
VVhere returnable 296 A
Certificate 296 C 297

Pone.

To remove a VVrit of Right 8 C,D
To remove a VVrit of Right of Dower 15 E
The form of the writ to remove a Replevin 155 M
Out of what Court it comes, and in what Caſes it lies 155 M
Form of the writ for the Defendant in the Replevin 155 A, 156
Muſt ſhew ſome cauſe in his writ 155 A, 156
VVhat cauſe the Plaintiff muſt ſhew 156
It lies for the Plaintiff in a writ of Account without cauſe ſhewn, but not for the Defendant 259 G
So likewiſe in Debt 263 I
Lies to remove a writ of Admeaſurement of Paſture 277 F, G
To remove a writ of Meſne 301 A
To remove a writ of Detinue 307 D
To remove a VVrit *de Droit de Gard* 309 G
A writ of Admeaſurement of Dower 331, 332
To remove a writ of Nuſance 410 C

Poſt Diſſeiſin.

The form of the writ 421
Where it lies, in what caſes, and for whom 421, 422 D, E, 423 A
Double Damages 421
The ſame puniſhment as in Rediſſeiſin 421, 422 E, 423 A
Non-tenure, is no plea in it 423
VVhere the Enqueſt ſhall be taken by his default 424

Præcipe quod Reddat in Capite.

How to ſet in order whatſoever is demanded in a *Præcipe* 3 C
If the Tenant will ſue forth a *Præcipe in Capite* of Lands not holden of the King, the party grieved may have his *Superſedeas* in Chancery. 6 D, 9 B
VVhat it is, and where it lies 10 E, F, G, H, I, 11, 12 A
What to plead, and how 11 L
How to count and alledge Seiſin 11 M
It lies after the Demandant is barred in an Aſſize or other real Action 11 N
It may be in a *Sella ad Molendinum* 271 A

Prerogative.

Where thoſe that hold under the King ſhall not be diſtrained, to do Suit and Service to other Lords 352, 353, 354, 355
Where the King's Tenant ſhall not alien without Licenſe 389 A
Where a woman endowed of

Capite

Capite Land shall not marry without License 388, 389
The King by his Prerogative shall have a Corrody in an Abby of his own Foundation 510 *A,B*

Presentment.

Who may present, and when 74
Guardian in Socage cannot 74 *S*
Where the Monks shall present 74 *V*
By whom the Vicar ought to be presented 74 *A*
The King may repeal his Presentation, but a common person cannot 75 *C*
Where the King may present 74 *O,S,N,* 75 *F,G,H,K,* 76 *R,* 77 *A*
Usurpation between Coparceners shall not prevent a *Quare Impedit* 75 *I*
Two Benefices without a dispensation is an Avoidanne 76 *L*
The third part of an Advowson is the third Presentment 76 *Q*
Baron and Feme by purchase, suffer a Usurpation 76 *S*
Infants and Feme Coverts must present within six months 76 *T*
Presentment by a Stranger 78 *F*
The Chancellor shall present to the King's Livings under 20 Marks 78 *K*

Procedendo ad Judicium.

The form of the writ 341 *B,* 533 *D*
In what Cases, and for whom it lies, 341 *B,* 342 *C, D, E, F,* 343, 344, *C.D,* 533 *D,* 534
In what Courts returnable 342 *D*
After Aid Prayer of the King 342, *E,F,G*
In Assise after new Judges are made, and before Judgment given 343 *I*
Upon Aid Prayer if the King hath no Title there shall be a *Procedendo* 344 *C*
Rege in Consulto 344 *D,* 345 *E*

Parco Fracto.

The form of it 222 *I*
Where it lies 221
Who shall have it 221 *E,* 222
It is *Vi & armis* 222 *I*
The form of the writ upon a distress by the Servant 222 *G*
When the Distress is for an Amercement 221
Form of the writ for the Queen 221
Baron and Feme 223 *I*

Pledges & Plegiis acquietandis.

If the Heir bring an Assise, or Mortdaunceſter, he shall not find Pledges 43
The form of the writ 305 *I*
Where it lies 304 *C,* 305, 306
Without specialty 304 *C*
In what Courts 305 *I*
To discharge a man of an Account 305 *I*
The Surety not to be distrained so long as the Principal is able 30
The Surety may plead it 30
Debt lies upon a becoming Pledge without Specialty 2

Process.

The Process in *Audita Querela* 231
Process to be awarded upon a writ of Oyer and Terminer 2
Proce

Proceſs to Outlawry lies in Account, 259 *H*
Proceſs in a *Secta ad molendinum*, 272 *C,D*
In a *Quod permittat*, 275 *F*
In a Writ of Meſne, 304 *A,B*
In a Writ of Ward, 320
In a Writ of *Eſcheat*, 323
In Dower, *Unde nihil habet*, 330
In an Admeaſurement of Dower, 331 *H*,332
In a writ of Annuity, 341 *A*
In a *Contributione faciendâ*, 362 *D*
In a *Decies tantum*, 381 *F*
In a writ of Champerty, 382 *B*
Upon a Proclamation not to commit a Nuſance, 393
In a Certificate Sur Aſſiſe, 407 *G*
In a writ of Aſſiſe of Nuſance, 411 *A*
The Proceſs in a *Sine Aſſenſu Capituli*, 432
In a Mortdaunceſtor, 435 *G*
In a *Quare ejecit infra Terminum*, 439 *V*
In a *Cui ante Divortium*, 454 *M*
In a *Cauſa Matrimonii prælocuti*, 456 *L*
In a writ of *Entre in Caſu proviſo*, 458 *E*
In a *Contra formam collationis*, 470 *H*
In a writ of Aiel, 491
Upon a writ *De Tolnet quiet. Eſſend.* 503 *A*
Upon a writ of forcible entry, 51 *G*

Proclamation.

The King may by it command any perſon to ſtay within his Kingdom, 189 *C*
In a writ *de admenſuratione Paſturæ*, 278,279 *C*
The writ to make Proclamation, that none caſt filth in Ditches, or Rivers near Cities, &c. 392 *B* 411 *D*

Prohibition.

Upon the Miſe joyned upon a Writ of Right in a Court Baron, *D,E,F*
Againſt the Lord, *Quòd ne Injuſte Vexet*, his Tenant, 21 *E, F*
Where the writ of *Indicavit* lies, 66 *E*
What it is, and where it lies, and againſt whom, 88 *H*,89 *A,B,C* 386 *E*
When directed to the Sheriff, 89 *B, A*
For the Tenant againſt the Lord, and Lord againſt Tenant, 89 *A, B,C,D*
Againſt the Biſhop, if he does not hold plea of an Advowſon, 89 *D*
Where the King ſhall have it, 90,94 *D*
It lies upon a Suit in the Spiritual Court, *pro Catallis & debitis*, 90 *H*
Or for a Lay fee, 40 *I*,93 *I* 95 *I*,97 *G,H*
Or for Treſpaſs, &c. 90 *M*,93 *K*,95 *H*,97 *G,H*,98 *A*
Where the Kings Tenant ſhall have it, 91
It lies to the Sheriff that he hinder the Spiritual Court from exacting things contrary to Law, of the Kings Subjects, 91 *A*
Although a Debt is acknowledged in the Spiritual Court, that Suit ought not to be brought there, for it excepts in Caſe of Marriage, or a Will, 92 *C,D,F,G*
It lies upon a *Modus decimandi*, 90 *G*

Where a ſecond Prohibition ſhall be granted, 93 *H.*
Upon a compoſition, 93 *L*
For the King to the Ordinary, that he ſhall not viſit his Hoſpitals, 93 *A*
So where a Common perſon is Founder, 94 *B*
It lies after a Recovery in *Quare Impedit*, 94 *C*
It lies upon a Citation *De violenta manuum injectione in Clericum*, 94 *E*
For defamation, 94 *F*
It lies where a man is Excommunicated for ſuing out a Prohibition without any legal cauſe, 94 *G*, 9
It lies for the Clerks or any other Officer in Chancery, that they ſhall not be ſued elſewhere, 95 *H*
Where two Patrons preſent, 95 *K*
Where the Patron is diſturbed by a Stranger, 95 *L*
VVhere the King recovers his collation to any Church, and is afterwards diſturbed by Appeals, &c. this VVrit lieth, 95 *M, N*
So if the King hath a Writ to remove the Incumbent and he appeal, 96 *A*
If a common perſon recovereth his preſentment, and afterwards there is an Appeal, it lieth for him, 96 *B*
For citing the Kings Incumbent to *Rome*, 96 *B*, 97
Upon Suit for breach of Oath, 97 *D*, 95 *I*,
It lies for not granting a Copy of the Libel, 97 *E*
To ſtay a Suit upon a deviſe for Lands, 97 *F*
VVhere there is a Citation after a *Quare Impedit* ſued, 98 *I*
VVhere it lies upon a *Modus*, but not upon a Grant, 98 *K*
Where upon a Matrimonial Contract, and where not, 98 *A*
It lies not for Executors when they are ſued, 98 *B, D*
Where there is Suit between two Parſons, 98 *E*
It lies for the Kings Chaplains when they are cited by the Ordinary to be reſident upon their Benefices, 99 *G*
It lies againſt him that ſues another out of the Realm, 100 *H*
And againſt him that purchaſeth a Citation from the Court of *Rome*, 100 *I*
If an Inferior Court Arreſts or Attacheth the Goods of a perſon out of their Juriſdiction, this Writ lyeth, 102 *F*
The form of the VVrit, 102 *F*
That Tenant in Dower ſhall not be diſtrained for the Debt of her Husband, 102 *G*
The form of the VVrit, *ibid.*
It lies where in the County-Court the Debt, &c. is above 40 *s.* 103 *A*, 104
The form of the VVrit, *ibid.*
So where there is 5 *l.* due, ſeveral Plaints are ſued upon it, this VVrit lies, *ib.* 104
It lies after Judgment and Execution, 104
VVhere the Plaint is of Treſpaſs, *Vi et armis*, This VVrit lies 104 *B*
The form of it, *ib.*
Upon a Suit for Charters which concern the Inheritance, 105 *B*
The form of the Writ, *ib.*
For ſuing a detinue for Charters (which concern Land) in the

the County Court. 307 C
To the Marſhals Court, 536

Protection.

The ſeveral ſorts of Protections, and in what Caſes they are allowed, 62 B, G, D, E, F, G, 63 H, I, A, D
Who may caſt it, 62 G
In what Courts to be allowed, 63 K
For Infant or Feme Covert, L
For Merchants or Collectors, &c. 63 D, E, F, G
All Clergy men may ſue them out for themſelves and Fermors, 65 A
That the Tenant in the Kings Service is not ſufficient to Prorogue an Aſſiſe, 343 H

Preſcription.

A man may preſcribe to have Common Appurtenant, 401, 402 N
A preſcription to be diſcharged of Toll, Murage, Pontage, &c. and held good, 503 I, 504 D

Quare Ejecit infra Terminum.

THE form of the VVrit, 440
In what Caſes and for whom it lies, 439, 440
VVhat ſhall be recovered in it, 439 T

Quare Incumbravit.

VVhere to be ſued, 107 D
In what Court, ib. F
VVhere it lies, ib. E, H, 108 O
What it is, ib. G
A new writ may be ſued after a Nonſuit, 108 O
The form of a *Quare Incumbravit* 108 M
How the VVrit and Count ſhall be, 108 K
A good bar in that Action 108 N

Quare non Admiſit.

The form of it for the King, 105 C
VVhen, where, and for whom it lies, 105 C, 106 F, L
VVhat ſhall be recovered by it, 106 G
Good bar to it, ib. H, 107 M, B
It lies againſt the Biſhop for the refuſal of the Arch-deacon, &c. 106 F
VVhere it lies for the King, ib. L
Lies againſt the Biſhops Official, 107 N

Quarentine.

VVhere the writ *de Quarentina habend.* lies, 360 E, 361 F
The form of it, 360 E
The proceedings thereupon, 361 A
It is Vicontiel, 360 E

Quare Impedit.

The form of it for the King, 71 E, F, 72, 73 E, F, 79 P
The form of the VVrit where the King joyns with another, 72 O
The form of it, *pro Eccleſia Vicaria capella*, &c. 72 H
How it ſhall be between Coparceners, 72 A, B
It lies for a Donative, 72 C
For a Biſhop, where he ought to Collate, 73 D
VVhere it may be without allodging

ledging preſentment, 73 *H*
Preſentment in a Proctor alledged 73 *I*,79 *O*
It lies for diſſeiſee, 74 *Q*
It lies of an Hermitage, 75 *E*
Uſurpation between Coparceners ſhall not prevent this Writ, 75 *I*, 80 *D*
It lies for the Founder of a Priory, 76 *O*
It may be ſued by the Defendant againſt the Plaintiff if he be not admitted and inſtituted, 77 *C*
If one that hath a Donative preſents his Clerk to the Ordinary, he ſhall never after Collate, 78 *P*
Prior and Covent, 79 *Q*
It muſt be brought within the ſix Months, 79 *Q*
How the Count ſhall be after a writ of *Droit D' advowſon*, 79 *A*
Where a Uſurpation ſhall not hurt the Diſſeiſee, 80 *F*
The Sheriffs return upon it, 86 *O*

Quid Juris clamat.

Where it lies, 327,328

Quæ plura.

What it is, and where it lies, 564 *A*
The form of it, *ib.*

Quod ei deforceat.

The forms of it, 346,347
For whom it lies, and in what caſes, 346 *B*,347,348
Upon default in a writ of Right, 347 *E*
Where to be ſued, *ib.F*,*G*
Againſt whom to be brought, *ib.F*
Where the Vouchee makes default, 348 *B*
Departure in deſpight of Court, *ib.*
For Baron and Feme, 347 *F*, 348 *A*
The form of the Count, 349 *C*
The defence, *ib.C*

Quod permittat.

Where it lies, and of what things, 112 *H*,272 *F*,*G*,273 *H*
The forms of the writs, 272, 273, 274
In what Courts, 272 *F*
It lies of Common, 272 *G*,273 *H*,*I*
It lies againſt the Lord to ſuffer his Villains to do ſuit to his Mill, 273 *M*
For Eſtovers, 274
Erigere ſcalas, *ib.*
It lies for a Corrody, *ib.*
For a Way, *ib.*
Good plea in Abatement, 274 *C*,275
For a Nuſance in erecting a Wall, Houſe &c. 275 *H*, 410 *C*,
Of a Fair or Market, 276
In the nature of a Formedon 472

Quo Jure.

The form of it, 284
Where, and for whom, and when it lies, 284 *F*, *H*,*I*,*K*,*L*
What defence the Tenant ſhall make, *ib. I*
Eſplees, *ib.I*
The Miſe ſhall be joyned upon it, 284 *I*,*KL*,

Rationabili parte.

Betwixt whom, and for what it lies, 18 *B*,19 *C*,20 *I*, 21 *B*
When it lies, 19 *C*,*D*,*E*,20 *I*
What it is, and to whom directed, 19 *F*,*G*
May be removed by Tolt, *ib.G*
The Mise not to be joyned in it, 19 *G*,21 *A*
The form of it, *ib.*
To be brought against all the Coparceners, 20 *M*
Non-tenure is no plea in it, *ib. N*
When to alledge the Seisin, *ib. P*

Rationabili parte bonorum.

The forms of the writs, 270
The nature of it, and in what cases it lies, and for whom, 270, 271

Rationabilibus divisis.

The form of the writ, 285 *N*
The form of the Count, 285 *R*, 286 *A*
The nature of it, and for what it lies, 285 *M*
For whom, 285 *O*,286,*A*,*B*,*C*, *D*,*E*
When to be removed, 285 *Q*
The Defendant may joyn the Mise, *ib.Q*
Esplees, 286 *A*
Bar, *ib.D*,*E*

Ravishment de Gard.

The writ was given by the Statute of *West.*2. 310 *I*
The forms of the writs, 312 *F*
Where it lies, and when, 312 *E*,*F* 313,317 *G*
For Guardian in Socage, 313 *G*
It lies for an Orphan of *London*, 317 *G*

Recaption.

The form of the writ, 161 *H*,162 *A*,163 *E*
For whom it lies, and in what cases, 158 *E*,159 *F*,*G*,*H*,160 *M*, *D*,*E*, 161 *F*,*G*,*H*,162 *A*,163 *B*,*C D*
Lies not where the Cattel of a Stranger are distrained a second time, 159 *H*
When two mens Cattel are distrained, *ib.I*
Rien arrere pleaded, 160 *M*
Lies before Avowry, *ib.A*
Shall not avow but justifie, *ib. B*
A second distress may be after a Non-suit, *ib. D*
To whom only to be directed, 163 *C*
When amerced, and render damages only upon a Conviction, and when fined, *ib. D*
Abatement of the writ, 160 *L*

Recognizance.

To keep the Peace, may be taken by the Sheriff, 181 *D*,182
What other Recognizances he may take, and how to be executed, 294,295
How Executions to be sued, and what Executions, and when to be sued out upon a Recognizance, 586, 587,588,589, 590

Recordare.

To remove a writ of Right into the Common Pleas, 7 *A*, 8 *C*
To remove a writ of Right *de Dote*, 15 *E*,16
To remove a Plaint of a Court

of Auncient demeſn, 26 *E*, 27 *A*, *B*, *C*, 29 *H*
The form of the writ, 157
In what caſes it lies, and to whom directed, *ib. B*, 237 *K*, 263 *I*
The Plaintiff may bring it without ſhewing cauſe, but the Defendant cannot, 157 *B*
It lies after a diſcontinuance in the County Court, 158 *A*
To an Ancient demeſne Court, *ib. B*
VVhen it bears date before the entry of the Plaint *ib. D*
It ſhall not be ſued againſt the Terre-tenant, 237 *K*
It lies in a writ of Debt, without ſhewing cauſe, 263 *I*
To remove a writ of Covenant, 323 *D*

Rediſſeiſin.

The form of it, 417 *C*
In what Caſes, and what Court it lies, 417 *B*, 418 *D*, *E*, *F*, *G*, 419 *L*, *A*, 420 *C*, *D*, *E*, *F*,
Againſt Baron and Feme, 418 *H*
A writ of Aſſociation lies in it, 417 *D*, 418 *I*
Shall recover double damages, 420 *C*
One Rediſſeiſin lies after another, *ib. D*
It lies not upon a *Droit eſoſe*, *ib. G*
There muſt be two of the old Jurors at the leaſt, *ib. H*
Tenant by *Elegit*, &c. ſhall have it, 421 *I*
His puniſhment, 420 *C*, 422 *E*

Releaſes.

Where a Releaſe is a good bar to a Judgment, 229
It muſt be pleaded to a *Scire fac.* 230 *I*
A Releaſe to one Obligor diſchargeth both, *ib. M*

Remainder.

He in Remainder ſhall have an *Ex gravi querela*, 441 *M*, 443 *F*, *G*, 446 *C*
Shall take advantage of a Condition broken, 446 *C*
He may have his writ of Intruſion. 454 *D*, 455
May have a writ of *Entre in caſu ſimili caſu*, 460 *B*, 461 *F*

Remitter.

A man *de non ſanæ memorie* made a Feoffment, and took back an Eſtate for life, and adjudged a Remitter, 450 *F*

Replevin.

The form of the writ, 152 *D*, *E*
For what it lies, *ib. D*, *E*
How to Count upon it, *ib. D*
County Court, 152 *F*, 154 *C*
Returns of the Sheriff, for a *Withernam* to be granted, 153 *G*
The Sheriff may command a Replevy by word, 154 *E*
The Lord ſhall have it for his Villains Cattel, *ib.*
Tender of amends, 154 *G*
In any County, 155 *I*
By the Sheriff, 154 *E*
Where the Sheriff muſt enter a Liberty, and make deliverance, 152 *F*
By what writ to be removed, and into what Courts, 155 *M*, 157 *B*
The form of the writ of Recaption in Replevin, and in what caſes

cases it lies, 161 *H, F, G,* 163 *C*

Rescous.

The form of the writ, 223 *D,* 224 *E,G,*225
Where it lies, and for whom, 223 *C,*224 *E,*225,226 *F*
For the Master, upon a Distress made by his Servant, 224 *F*
For a Collector of Taxes, 224 *F,G*
Upon an Arrest, 224 *G*
In whose name to be brought, 224 *F,G,*225
The Plaintiff upon an Execution, shall have it, 226
It lies not where a distress is made, and nothing due, *ib.E.*

Restitution.

To the Petty Jury in Attaint, after they have satisfied their fine and imprisonment, 242 *L,* 243
Of goods which are seised for a Wreck, 246 *C*

Return.

The several Returns to ground a *Withernam* upon, 151 *C,* 153 *G,* 164 *A,*165 *B*
Returns not good in Replevin, 152 *A*
How the Sheriff is punishable for a false Return, 216 D

Return. habend.

The Defendant shall have *Withernam* against the Plaintiff, upon a *Return. habend.* 166 *F*

Reversion.

Reversioner may make an Attorney, 60 *T*
He may bring an *Ex gravi querela,* 441 *M*
The Grantee may have an *ad Terminum qui præteriit,* 448 *B*
When he shall have a writ of Intrusion, 451,452
He shall have a writ of *Entrie in casu proviso,* 456 *M,*457 *B*
Where he shall have his writ of *Entre in consimili casu,* 458, 459 460
Where he shall have his writ of *Entre ad communem Legem,* 461, 462

Revelleisin.

Attaint lies upon a false Verdict given in it 241 *I,*242

Reparatione faciend.

The forms of it, 281 *B, C,D,*282 *F*
VVhat it is, and for whom it lies, 281 *A,C D*
For not repairing a Bridge, 281 *D,E*

Roy & Reyne.

Where lands entailed are liable to pay the Kings debts, 481,482, 483
Upon every Grant to be made by the King, of Lands, Tenements, Liberties, or other things, a writ of *ad quod dampnum* must first issue out to the Escheator, 501 *F,* 502 *H*
In what cases the Writ issues, see in title *Ad quod dannum,* 493
The King by the Law of Right is to defend his Subjects, 517 *A*
The King by his Prerogative may distrain any one of the Tenants, upon an Alienation, to pay the intire duty. 522 *A,B*

Scire facias.

IN a *Quare impedit*, 79 *A*,B,80 *B*
Quare consultationem non, 121 *C*
To execute a Fine and Summons returned, 216 *D*
Audita querela lies not after a Summons returned upon a *Sci. fac.* 230 *I*
Where it lies against the Heir for the Mesne to acquit him, 303 *T*
After the year and day of payment upon a Recognizance, 588 *C*
Against the Terre-tenants, 589, 590 *D*
It lies upon a Defeazance upon a Recognizance, 598 *D*
Several *Scire facias* may be sued where two are severally bound, 590 *C*
Against the Heir and Terre-tenants, *ib. D*
The Executors cannot sue out an *Elegit* until a *Scire facias*. 591

Scutagio habend.

What it is, and where it lies, 186 *A*,*B*,*E*,188 *F*
Knights-service what, 185 *E*,*F*
The form of the writ, 186
The Kings Tenant against his Tenants, *ib.G*,*H*,*I*
One service for Lord, Mesne, and Tenant, 186 *K*,187 *D*
The Commission to levy Escuage, 187 *E*, 188

Securitate inveniend. ne exeat regnum sine Licentia.

The several forms of the writs, 189 *B*,*D*
In what cases they lie, 188 *A*, 190 *F*
From whence they issue, 188 *A*, 189
To whom directed, 89 *B*, 190 *I*
They may pass with a Passport, 190 *F*
The Kings Proclamation is sufficient, 189 *G*

Secta ad Molendinum.

The form of the writ, 271 *A*
What it is, and where it lies, and for whom, 271, 354
It may be sued in the County-Court, or Common Pleas, 271 *A* 272, 354
Tenant in Dower, or for life may have it, 272 *B*
The Count in it, 272 *D*

Services, v. titulo sint

Service de Chevalier.

The Widow of a Tenant in *Capite* must not marry without Licence, 388 *G*
The form of the writ, *ib.*
Her marriage may be granted, 388 *D*,389
Where the Alienation shall not be without the Kings License, 389

Severance.

Summons and Severance lies not in *Libertate probanda*, 175 *I*
Summons upon the Land, how to be tried, 215 *C*, 217 *D*,218 *B*, *C*
Summons and Severance lies in a *quo Jure*, 284 *K*,

Sheriff.

May have an Under-Sheriff, 221 *C*
May make an Attorney to make their proffers, 61 *V*
What he ought to do upon a *Vi laica removenda*, 122 *G*
What he ought to do upon an *Excom.*

Excommunicato capiendo & Cautione admittenda, 140, 141, 142, 143
May command a Replevin to be made by word, 154
What Returns to make, and what to do in Replevins, 152, 153, 154, 155, 164 *A*, 165 *B*
What he muſt do upon a *Nativo habend.* 171, 172
What he muſt do upon the writ *de ſecuritate Pacis*, 177, 178, 179, 180
Ex officio may bind to the Peace, 281 *D*, 182
To enquire when any damage is done to any perſon protected by the King, 203 *B*, 204
May be ſued for an Eſcape, 205 *G*, *A*, *C*, 206, 266 *A*, 288 *B*
For a falſe Return, 201 *B*, 215 *C*, 216 *D*, 217, *D*, 219 *H*
May bring his writ of Reſcous, 225
To attend upon and execute the Proceſs of Commiſſioners of *Oyer* and *Terminer*, 250, 251
He ſhall make admeaſurement of Paſture, 277 *G*
What Recognizances he may take, and how Execution to be done upon them, 294, 295
What he ought to do when a *Non ponend. in Aſſiſa* is directed to him, 368, 369, 370, 371
Who he ought to return upon Juries, and who not, 369, 370, 371, 372

Spoliation.

What it is, where it lies, and for whom, 80 *G*, 81 *K*, 82
Lies againſt him only that hath Inſtitution, 81 *I*
Lies not where the right of the Patronage is to be tried, 82 *B*
It lies by one Parſon againſt another, 82 *E*

Statute.

How the Clerk muſt be qualified that is to take obligations upon Statutes Merchant, 367 *E* 3

Superſedeas.

When to be granted to the Lords Court in Ancient demeſn, 29 G
Upon a writ of Right where there is Forreign Voucher, 88 *H* 530 *A*
To diſcharge a man from an *Excommunicato capiendo*, 143 *D*, *E*, 530 *B*, 531
It lies upon a *Nativo habend.* 172 *D*
It lies upon putting in Surety to a *Supplicavit*, 180 *A*, 529 *E*
It lies upon an *Audita querela*, 230 *G*, 532 *A*
Upon an appearance to an *Exigent*, 524 *A*
The form of the writ. *ib. A*
Where Sureties are found in Chancery, 524
In what caſes to be granted, 524 *A*, 525 *B*, *C*, *D*, 526, 527, 528
To be awarded out of the Chancery, 526 *E*, *A*, *B*, *C*, *D*
Not allowable to an *Exigent* after Judgment 526 *G*, 527 *E*
Where an Attaint is ſued, 527 *F*, *G*, 528 *C*
Upon a writ *de Homine replegiando*, 531 C
Where the Suit is in the Sheriffs Court, *Vi & armis*, &c. 531 *D*
Upon a writ of Error in *London*, &c. 532 *E*
Where the Sheriffs hold plea of 40 *s* *ib. A*
To the Conſtable of *Dover*, *ib. B*

Supersedeas.

To the Barons of the Exchequer, where they award distress against one who hath none of the Lands of him who was the Accomptant, 532 *F,G*

Surety, v. tit. **Plegiis acquietand. Mainprize.**

Surety of the Peace.

The form of the writ 177 *G*
Where it lies, and for what, *ib.G*, *H*,178 *B*,179 *G*
Where upon Oath made, and where not. 177 *H*
Attachment upon it, 178 *A*
Damages and Fine, *ib. A*
Lies to the *Cinque Ports*, *ib.B*
The form of the writ directed to the Justices of the Peace and Sheriff, 178 *C*,179 D
Where returnable, 180 *B*
When may be superseded, *ib.H*
Must enter into Recognizance, 181 *D*,182
When, and where to be certified, 179 *G*,180 *B*,181 *C,D*
For the wife against the husband, 179 *F*
Where, upon Sureties being found in Vacation time, a *Supersedeas* ought to issue out of the Chancery, 524, 525, 526, 527, 528

Suit.

Who must do Suit and Service at the Lords Courts, 355 *B,C*
The Kings Ward nor Tenant not to do Suit to any Lord, 352, 353, 354
How to be done by Parceners, 355 *C*
By Feoffees, 356 *D*
Nor by Tenants in Ancient demesn at Court Leets, 359 *C*
Distress must not be taken for more Services than are due, 363, 364
The writ *de Deonerando pro rata portione* lies, where part of the lands for which an entire Fealty and Rent was reserved is aliened, 521 *H*

Significavit.

What it is, and where it lies, 144 *F*
Popes Bull, *ib.*
By a Bishop upon another Bishops Certificate, *ib.*

Supplicavit.

What it is, and where it lies, 179 *G*,190 *E*
Sureties must be found upon it, 180 *A*,190 *B*
Removed by *Certiorar.* 181 *C*, *D*
Where returnable, 180 *B*
For the wife against her husband, 530 *F*
The form of it, *ib.*

Spiritual persons.

Where the Successor shall have a *Sine assensu capituli*, 431
Upon the Alienation of their predecessor, 431,432
The several forms of the writ, *ib.*

Tail.

Tenant in Tail may bring a *quod ei deforceat*, 347
Where the Heir in Tail shall bring his *Quod permittat*, 472
In what Cases the Heir in Tail shall bring his Formedom in Descender, 471,472,&c.
Where Lands in Tail are lyable to pay the Kings Debt, 481 *B*,482, 483
In what cases the Formedon in Reverter lies, 487,488,489

Tenure.

Upon what Tenures the VVrit of *Exoneratione Sectæ ad curiam com.vel Baron.*lies, 352 *A*,B,353, 354
What shall be Tenure in *Capite*, 666 *A*
Where Tenant in Soccage must sue out his Livery, 578 *C*

Testament.

In *London*, where to be proved, 443,444,446 *A*
In *Oxford* where to be proved, 444
A Writ lies to the Ordinary to compel him to prove a Will, 445

Toll.

No Toll to be paid for Lands in Ancient Demesn, 30 *E*, 505 *A*, 506,507 *D*
Account lies against Collectors of Toll, 262 *F*
Where the VVrit *de Essend. quiet.de Tolneto* lies, and for whom, 503 *I*,504 *D.E*,555 *F*
The form of the Writ,and to whom directed, 503
Where returnable, 503 *A*
For Spiritual persons, 505 *F*
For the Lord in Ancient demesn, 506 *B*
For Merchant Strangers to be discharged of Murage, Pannage and Pontage,&c. 504 *D*

Torn de Vic.

The form of the Writ commanding the Sheriff, not to come out of another Liberty to his Torn, 357
When the Sheriff ought to hold his Torn, 357
What persons are not compellable to come to it, 358 *C*,359 *C*,*D*
How often compellable, 360

Traverse.

The sale mentioned in the Writ of *Ejectione firmæ* is not Traversable, but only the Ejectment 441 *K*
The quantity nor seisin of the Services are not Traversable in a *Cessavit*, 464 *F*, *G*

Trespass.

De muliere abducta cum bonis viri, 117 *K*
It lies for a second distress made by the Baily, 159 *H*
The several sorts and forms of the Writs, 190,191,*B*,192,193, 194,195,196,197,198,199
Where it lies, and in what Cases, and for whom, 190 *A*, 191 *B*,*C*,*D*, *E*,*F*,*G*,*H*, 192 *I*,193,194,195, 196, 197,198,199
To whom directed, and where returnable, 191 *G*,H

When

When *Vi & armis* is not to be in the Writ, 190 *A*,191
When it must be in the Writ 191 *H*,
Good cause of Abatement, 191, *H*, 192
Where it is returnable in the Kings Bench, and where in the Common Pleas, 192 *I*
False Imprisonment 192 *K*, 196 *P*,201 *C*
One writ lies for several Trespasses, 192 *L*,193 *G*,196 *I*
For a Hawk, 192 *L*
For Hunting in a Warren, 192, *M*
In a Close, 193 *A*,198 *K*
Park, 193 *A*
The form of it.
De solo fosso et Carbonibus asportatis, 193 *B*
De equo Capt. quous; finem fecit, 193 *C*
De domo fract. &c. 193 *D*, 194, *A*,196 *I*
For Executors, where it lies, and the form of it, 193 *E*,200 *D*
Against a Corporation, 193 *F*
For fishing in his Piscary, &c. 193 *G*,195 *G*,196 *H*,*I*,*K*
De navi absulta, 194 *I*
De bladu et grauinibus bosci Cædui depast. 194 *K*
De stagno fract. 194
For molesting his Servants, and impounding his Cattel, 194 *N*, 196 *I*
The form of the writ for a live thing, 195 *B*,196 *M*
For dead things, 195 *B*,196 *M*
For releasing a Villain out of the Stocks. 195 *D*,*E*,197 *D*,202 *E*
For taking of his Doves, &c. 196 *I*
Pro bladis in garbis et Fœno depast. 196
Pro lapide molari, 196 *L*
For a Mill Pool broken, 196 *M*
For taking and Sheering his Sheep, 196 *O*
For breaking his sluces, 197 *B*,*C*
For putting out an Eye, 197 *F*
For a Corporation, 197 *G*,*H*
Oves cum cane fugavit, 198 *L*
For diverting a Water-course, 198 *M*
For carrying Cattel distrained, to unknown places, 198 *N*
The forms of the writs, 198 *O*, 199 *P*, *A*,*B*
The Sheriff shall make delivery upon these writs, 199 *B*,200 *E*
For taking his Oxen and Barges &c. 199 *C*
For taking a Monk out of the Monastery, 200 *G*
For taking and Marrying his Son, or Daughter, 200 *H*
For the King. 200 *I*
Quare fensur. freger. 201 *K*
For taking away a Waif or stray, &c. 201 *L*
For taking away a wreck, 201 *D*
Where the Servant is disturbed, the Master shall bring the Action, 202 *G*, *L*
Between two Tenants in Common, 202 *E*
For taking his Apprentice, 203 *I*
Church-wardens *pro bonis Ecclesiæ*, 203 *K*
With a *Continuando*, 203 *L*
It lies for the Ordinary until Administration, 203 *M*
It lies for taking the Lands and Goods during the Kings Protection, 203 *A*,*B*,204
It shall be by *Pone per Vadium*, &c. 250 *G*

It

It lies for the ſucceeding Biſhop for Treſpaſs done in the Vacancy, 248 *H*
It lies upon a Diſſeiſin, 472

Treſpaſs upon the Caſe.

The form of the writ, and where it lies, 191 *B*,204 *E*, 205 *F*, *G*, *A*,206, 207,208,209
And for what, 191 *B*, *C*, 205 *G*,*B*,*C*,260,207,208,209
It ſhall be by Summons, 205, *G*,205 *C*,206
Againſt the Sheriff for an Eſcape, 205 *G*,*A*
For a falſe Return, 205 *B*
Where againſt the Bailiff of a Liberty for a Diſtreſs taken, 206, *E*,206 *F*
For not cleanſing his Ditches, 206 *G*
For a Priſoner, againſt the Goaler for abuſing of him, 207 *H*
For diſtraining a Prelates Horſe whereon he is Riding, 207, *H*
Or upon their Church Lands, 208 *E*,209
For *Non-ſezance*, 207 *A*
Againſt an Inn-keeper, when Goods are ſtoln from thence 208 *B*
Upon a Warranty, 208 *C*
For a Male-ſezance, 208 *D*, 209, *F*,219 *A*
For taking Toll where none is due, 209 *F*
For diſtraining Tenants againſt a Preſcription. 209 *F*
For making a Gulf in the Water, 210 *A*
Againſt the Sheriff for entring a liberty, 210 *B*
For the Goaler againſt the Priſoner for Eſcaping, 210 *C*
Againſt him that playeth with falſe Dice, 211 *D*

Tryal.

The Miſe ſhall be joyned in a Writ of Right, 9 *E*,*F*
So likewiſe in a Writ of *Ne injuſte vexes*, 23 *A*
Whether Summons or no, how to be tryed, 215 *C*,217 *D*
In a *Quo Jure* ſhall be but upon the Meer Right or Battail, 284 *I*
So likewiſe upon a *Rationabilibus diviſis*, 285 *Q*
The Miſe ſhall be joyned in a Writ of Cuſtoms, 339 *N*

Tolt.

The form of the Writ where the party is denyed Juſtice, or his Suit upon a Writ of Right. 6 *F*,7
To remove a Writ of Right of Dower, 15 *E*

Valore

Valor Maritagii.

The form of the Writ, 314 *F, G*, 315 *K*
What it is, and where it lies, 314 *F, G*, 315 *I, A, B*
Against the Heir of the Mesn, 315 *L*

View.

It shall be granted in a *Secta ad Molendinum*, 272 *C*
In a *Curia claudenda*, 383 *B*
Shall be in an Assise of *Nusance*, 410 *F*
Lies not in a *Nuper obiit*, 439 *Q*

Vicar, v. Parson.

Vi Laica removenda.

What it is, where it lies, and for whom, 121 *D*
The form of the writ upon the Bishops certificate, *ib. E*
When directed to the Sheriff, and the form thereof, *ib. F*
What the Sheriff ought to do, 122 *G*
The form of the Bishops Certificate, *ib. B*

Villainage.

In a *homine Replegiando*, 149. 151, *F, G, A, B*

Victuallers.

No person shall be a Victualler during the time that he is Mayor or Sheriff, &c. of any Town, 314 *O, A, B*
The form of the writ against them, 315
The forfeiture, *ib. D*

Voucher.

Where a man may vouch and doth not, he shall not have a *Warrantia Chartæ*, 298 *I*, 299 *D*
What Lands of the Vouchers are liable, *ib.*
A man cannot vouch in an Assize, 299 *A*
When may be in an Assize of *Novel disseisin*, 396
May vouch at large in a *Mordaunceſtor*, 396 *F*, 435, 436
Lies not in a *Nuper obiit*, 439 *Q*

Usurpation, v. tit. Presentment, 6 Quare Impedit.

Utlawry.

Process to Utlawry lies in a writ of Account, 259 *I*

Waste.

THe nature of it, and against whom, for whom and what it lies, 130 *I*, 131, 133, *K*, 134
The form of the writ against Tenant in Dower, 123 *C*, 124 *A*
Against Tenant for life, or years, 123 *C*, 128 *F*
Where it is brought by an Abbot, 123 *D*
Where by the Heir, and when, *ib.* 131 *A,B*, 132 *E*, 134
Against whom to be brought, 123 *E,F*, 124 *A*, 125 *B*
By the Kings Grantee in Reversion, 124 *H*
The form of the writ against Tenant *per* Courtesie, 125 *C*
Where the Heir grants the Reversion in fee, *ib. D*
Where it lies against Tenant *per* Courtesie, *ib. D,E*
The form of the writ against Tenant for life or years, 126 *G,H*, *I*, 133 *D*, 134
The form of it for an Abbot, or his predecessor, 126 *A*
The form of the writ against Executors, *ib. B*
Against Baron and Feme, *ib. C*
For the Heir against Baron and Feme, 127
For one which was a Copartner after Partition, *ib. D*
For Coparceners, 134
Against Grantee of Tenant for life, 127 *E*
Against Lessee of a Parson, Prebendary, &c. 128 *F*, 133 *O*
By Grantee of, or he in the Reversion, 128 *G,H*, 129 *A,B,C,D* 130 *E,H*, 131 *C*, 133 *I*
By Grantee of a Remainder, 129 *C,D*, 133 *B*
For the Lord by Escheat, 130 *G*
Against Tenant *by Elegit*, and the Executors, *ib. H*
Against Escheators and Guardians, 131 *A,B,C*
Betwixt Tenants in Common, *ib. D*, 134
By Guardian in Socage, 132 *G*, 134
What shall not be accounted waste, 132 *K,L,M*
Feme executed by the husbands death, *ib. I*
For not repairing of Banks, *ib. N*
To plow a Meadow, 133
Lies not against Tenant in Tail, *après* possibility, *ib. P*
What Trees shall be waste, *ib. A,C*
Waste done by a Stranger, *ib. G*
For Tenant in tail, *ib. H*
When, against whom, and by whom to be brought, 133 *K*, 134
Destruction of Villains, 134
No waste not to repair Ruinous Houses, *ib.*
By the Heir against Guardian in Socage, 134, 135
Attaint lies upon an Enquiry in Waste, 236 *G*

Withernam.

Caipas in Withernam against body and goods in a *homine Replegiando*, 151 *C*, 152
The form of the Writ, 153 *A* 164 *F*
In what cases it lies and for whom, 153 *G*, 164 *E*
Non omittas to a Liberty, 154 *B*
It may be awarded out of the County Court, *ib. C.*

The

The Sheriffs return to be rehearſed, 164 *G*

The Sheriffs return to ground the Writ. *ib. A*

Non omittas, 165

The form of the Writ out of the Chancery, *ib. B*

Proceſs to the Utlawry lies upon a *Withernam* returned in the Kings Bench or Common Pleas, 166 *D*

Averia elongata, *ib. D,E*

Warrantia diti.

What it is, and where it lies and in what caſes, 36 *A,B,C,D*

The form of the writ, 36 *D*

Grantable by the King only, and to whom to be directed, 37 *E*

Warrantia Chartæ,

Of Land in Auncient demeſn, 29 H, 300 *K*

The form of the Writ, 297 *E*

Where it lies, and for whom, 297 *D*, 298, 229, 300

Where it lies where there is no Charter, 297 *F*, 298 *G*

It lies upon the words *dedi et conceſſi* againſt the Grantor, but not againſt his Heir, 298 *H*

It lies not where a man may vouch, and will not, *ib. I*

It may be ſued out before he is impleaded, 298, 299 *D*

What Lands of the Vouchee are liable, *ib.*

It lies not upon an Exchange, 299 *I*

It lies againſt none but Tenant of the Land, *ib. C*

In what County to bring it, *ib. F*

By what it ſhall be determined, 300 *G*

Diverſe Writs, *ib. H*

What ſhall not abate it, *ib. I*

How the Recovery ſhall be, when the Demandant is not impleaded 302 *I*

Wreck.

The Lord may bring Treſpaſs for taking of it away, 201 *D, I*

What ſhall be a Wreck, 426 *G*

FITZ.

FITZ-HERBERT

HIS

NATURA BREVIUM.

Writ of Right Patent.

A THE natures of the Original Writs are to be ſhewed and declared, according to the manner and form as they are in order written and ſet down in the Regiſter, which ſhall be expreſſed and ſpecified in form following.

And firſt, becauſe the *Writ of Right Patent* is in its nature the higheſt Writ in Law, the nature of that Writ ſhall be firſt declared, and where it lieth.

B This Writ ought to be brought of Lands or Tenements, and not of Advowſon, or of Common; and lieth only of an Eſtate in Fee-ſimple, and not for him who hath a leſſer Eſtate, as Tenant in Tail, Tenant in Frank-marriage or Tenant for life: for theſe Tenants ſhall not have a VVrit of Right Patent. 40 E. 3. 3.

C And this Writ lieth properly where a man is ſeiſed in Fee-ſimple, and another recovereth the Land againſt him by Default in a *Præcipe quòd reddat*: now he who hath loſt by D Default ought to ſue this VVrit. Or if a man ſeiſed in Fee-ſimple die ſeiſed of ſuch Eſtate, and a Stranger doth abate and entreth into the Land, and deforceth the Heir; the Heir may ſue this Writ againſt the Tenant of the Freehold of the ſame Land, or an Aſſize of Mordaunceſter. 11 Aſſ. 17. *per Curiam*; a man recovered againſt the Heir by Default, and he brought a Mordaunceſter.

E And this Writ ought to be brought againſt him who hath a Free-hold at leaſt in the Land, and not againſt Tenants for years, Tenants by Statute-Merchant, Tenants by *Elegit*, nor Tenants by Statute-ſtaple; but it ought to be brought againſt thoſe Tenants who have an Eſtate in Fee-ſimple in the Lands, or an Eſtate tail, or for term of life at the leaſt.

And this Writ is always Patent, and not Cloſe, as other Writs are. And if the Lands be holden of other perſons than of the King or of the Queen, then this Writ ſhall be directed unto the Lord himſelf of whom the Lands or Tenements are ſo holden, if the Lord be not out of the Realm; for then it ſhall be directed unto the Lord's Baily; and then the Chancellor of *England* ought to be certified thereof. And if a man be elected Biſhop, and a Writ of Right Patent is to be uſed in the Court of the Mannor of the ſaid Biſhop, the Writ ſhall be directed unto the Bailies of the Elect, and not unto the elect Biſhop himſelf. And this Writ is as a Commiſſion unto the Lord, or unto the Baily of the Mannor, that they ſhall do Right. And the form of the Writ directed unto the Lord himſelf is ſuch:

Henricus *Dei gratiâ, &c.* Henrico *Comiti* Lanc. *ſalutem, Hgæcipim' tibi, quòd ſine dilatione plenum rectum teneas* A *de* B *de uno meſuag,& xx. acris terr' cum pertin' in* I, *quæ clamat tenere de te per liberum Servitium unius denarii per ann', pro omni Servitio, quod* W *de* T *ei defaceat; & niſi feceris, Vic'* Nottingham *faciat, nè amplùs inde clamorem audiamus pro defectu recti. Teſte, &c.*

And if the Lord be out of the Realm, then the form of the Writ which ſhall be directed unto his Bailies ſhall be ſuch:

Rex Ballivis H. *Comitis* Derb. *Honor' de* P. *in Com.* Derb. *ſalutem. Præcipimus vobis, quòd ſine dilatione plenum rect' teneatis* A. *de* B. *de uno meſuag.& xx. acris terræ cum pertin. in* I, *quæ clamat tenere de dicto Dom. veſtro per liberum Servit', facient. ſectam ad Curiam præd. Domini veſtri Honor. præd', in Comitatu præd', de tribus ſeptimanis in tres ſeptimanas, pro omni Servitio, &c.* ut ſuprà.

And by that it appeareth, that in a Writ of Right Patent he muſt expreſs by what Services the Lands are holden, &c. And if the Lands be holden of the King or of the Queen, as of an Honour, or in Burgage, then the Writ ſhall be directed unto the Kings or Queens Bailies, and the Writ ſhall be ſuch:

Henricus *Dei gratiâ Rex, &c. Ballivis ſuis* Lincoln' *ſalutem. Præcipimus vobis, quòd ſine dilatione plenum rectum teneatis* A *de* B *de uno meſuagio cum pertinen' in* Lincol', *quod clamat tenere de nobis per liberum Servitium unius denarii per annum pro omni Servitio, quod* W *de* B *ei deferc', nè amplius inde clamorem audiamus pro defectu recti, &c.*

And if a man ſue a Writ of Right Patent of Lands or Tenements which are holden by a Knights fee, then the form of

of the Writ ſhall be: *De uno meſuag.& x. acr. terræ,&c. quæ clamat tenere de te per Servic' feod' unius Militis pro omni Servitio.*

L. And the Writ of Right lieth of a paſſage over the water of *Thames*, and of paſture for 100 Sheep, and of the Rent of 1 l. of Ginger, thus: *De uno meſ. decem acris terræ, novem ſolidat. redd', & paſſagio ultra aquam* Tamiſiæ, *& paſtura ad centum oves, cum pertin. in W. & de redditu unius libræ zinziberis, unius libræ canell', unius roſæ, unius paris calcarium deauratorum, & de tertia parte unius gardini, cum pertinen. in* N. *quæ clamat tenere de nobis per liberum Servitium, inveniend. nobis una cum particibus ſuis quinque naves ad tranſitum noſtrum, ad mandatum noſtrum, pro omni Servitio, &c.*

[2.]

A And if the Lands of any Lord be in the King for the Nonage of the Heir, and a Writ of Right is to be brought in the Court of the Mannor, where the King hath committed the Wardſhip of the Lands to another; the Writ of Right ſhall be directed unto the Bailies of the Gardian to whom it is committed, or unto the Gardian himſelf, if he hath the Land in Ward in his own right, and by reaſon of the Seignory that the Heir is in his Ward. And the forms of the Writs in the Regiſter are thus: *Rex Ball. cuſtod. terræ & hæred.* A *de* B. Or thus: *Ballivis cuſtod. terræ* A *de* B. And this Writ is where the Gardian hath only the Wardſhip of the Land, and not of the Heir, &c. And unto the Gardian himſelf the Writ is, *Rex cuſtod. terræ & hæred.* B *ſalutem. Præcipim. tibi, &c. quod clamat tenere de prædict. hær', &c.* And if the Heir hath no Court for the poorneſs of the Land, that it is of ſo ſmall value, then the Writ ſhall be directed unto the chief Lord, as *Chief Lord*, and not as a Gardian; and then the Writ ſhall ſay, *Et quæ de ipſo clamat tenere, &c.* and ſhall not ſay as Gardian.

And if appeareth that a man ſhall have a Writ of Right of a Knights Fee; and the Writ ſhall be ſuch:

B *Rex* A *de* B *ſalut', &c. Præcipimus tibi, quod, &c.* W, *&c. de Servitio unius feod. Militu cum pertin. in* W, *quod clamat tenere, &c. per Servitium unius paris calcarium deaurator', pro omni Servitio, &c.* or *per Servitium inveniend. hominem equitem vel peditem, ad eundum tecum in exercitu* Walliæ, *ad ſumptum tuum & ad coſtum, &c. pro omni Servitia.* Or thus: *per liberum Servitium, portand. Brevia tua ad ſumptum tuum & ad coſtum tuum infra Com', pro omni Servitio.*

C And there is an order ſet in the Regiſter, when a man demandeth divers parcels of Land in his Writ which are of divers natures, which parcel ſhall be firſt ſpecified in the

VVrit, and what parcel ſhall be next unto that, and then what parcel ſhall be next to that, and ſo of all the parcels; and that appeareth by the two verſes following:

ſuagium, um, lendinum, lumbare, dinum, ra, tum, tura, cus, ra, ria, cus, tum, caria, ditus

Meſ. toft mo co gar ter pra paſſ. boſ' brue mora, Junca mariſ alne piſ red ſettare priora.

1 Aſſ. 24. in which Aſſiſe (Beſcou) was put before Paſture, yet good, v. 7 E. 6. Dier 84.

And if a man in his Writ will demand 20 Houſes, and 10 acres of Land, and 10 acres of Meadow, and 10 acres of Paſture, and divers other parcels; and afterwards in the ſame Writ he will demand the moiety or the third part of one Houſe, or of one acre of Land, or of Meadow, or of Paſture; then the form of the Writ is, to be put in the beginning of the VVrit the whole parcel, and in the end of the Writ the moiety, or the third part, &c. thus: *Quòd plenum rectum, &c. de uno meſuagio, uno molendino, uno gardino, medietate unius meſuag. unius acræ terræ, cum pertinent', exceptâ 1. acrâ terræ in* N. &c. ſo the Exception ſhall always be in the end of the Demand.

And a Writ of Right may be brought againſt divers Tenants who hold their Lands ſeverally; and then the form of the Writ is, *Rex* A.B. &c. *Præcipimus tibi, quòd*, &c. *plenum rectum teneas* A. *de xx. acris terræ cum pertinent. in* N. *quas clamat, &c. unde* F. *x. acr', & S. tres acras, & C. vij. acras ter. ei deforc'.* And ſo the word [Land] ſhall be in the end to him that ſhall be ſuppoſed laſt Deforceor, &c.

And if a Writ of Right be brought in the Court of any Biſhop or Abbot, it ſhall be then directed to the ſame Biſhop thus: *Rex, &c. venerabili in Chriſto Patri* Gulielmo *eâdem gratiâ Archiepiſcopo* Cantuarienſi, *totius* Angliæ *Primati, ſalut'. Mandamus vobis, quòd ſine dilatione*, &c. *quod clamat tenere de vobis per liberum Servitium*, &c.

And if it be directed unto an Abbot, then the VVrit ſhall ſay, *quod clamat tenere de te*, &c.

And if in the time of the Vacation of any Biſhoprick a VVrit of Right ſhall be brought in the Court of any Lands which are of the Biſhoprick, which are in the King's hands by reaſon of the Vacation of the Biſhoprick, then the Writ of Right ſhall be directed unto the King's Baily, or unto the Baily of him who is the Biſhop elect; and the form of the Writ is ſuch: *Rex ballivis Archiepiſcopat.* Ebor. *de* C. *ſalut.* Or thus: *Rex Ballivis* H. *Elect.* Lincoln. *de* H. *ſalut'. Præcipimus vobis*, &c. *quod clamat tenere de prædict. Archiepiſcop'.* Or thus, if it be directed unto the Bailies of the Biſhop elect: *quod clam. tenere de præd' Domino veſtro per Servic'*, &c.

But

But the Lord may give licence unto his Tenant to ſue his Writ of Right in the King's Court, or the Common Pleas, before the Juſtices; and that as well after the Writ purchaſed and returned into the Common Pleas, as before the Writ purchaſed and ſued. And the form of the Writ when it ſhall be ſued in the Common Pleas by licence of the Lord ſhall be ſuch: *Rex Vic', &c. Præcipe* A. *quòd juſtè, &c. redd.* C. *unum meſuag. cum pertin. in* M. *quod clamat eſſe jus & hæreditatem ſuam, & unde querit. quòd præd.* A. *ei injuſtè deforceat; & niſi fecerit, & prædict.* C. *fecerit te ſecurum de clamore ſuo proſequend'. tunc ſumm. per bonos Sum. præd.* A. *quod ſit coram Juſtic. noſtris apud* Weſtm. *in quindena ſanctæ Trinitat', oſtenſ. quare non fecerit: & habeas ibi Sum', & hoc Breve.* T. &c. *quia* I. *capital. Dominus Feod. illius nobis inde remiſit Cur. ſuam.* And ſo this clauſe ſhall be put in the Writ after the *Teſte, &c.* And if this clauſe be omitted, and the Lord after the purchaſe of the Writ ſend his Letter to the King that he is contented therewith, it is ſufficient.

And if ſuch clauſe, *quia Dominus remiſit Cur. ſuam*, were in the Writ, it is not material whether there were any Letter of the Lord in the Chancery, proving his aſſent, or not. [3] And the form of the Letter of Licence, which ſhall be certified unto the King is thus:

A *Excellentiſſimo Principi Domino* H. *Dei gratiâ Regi* Angl', *Domino* Hibern', *& Duci* Aquitaniæ, Dunelm. *Epiſcopus ſalutem in eo per quem Reges regnant, & Principes dominantur. Quia* K. *de* S. *in Curia veſtra, coram Juſtitiar. veſtris de Banco, per Breve veſtrum de Recto,* W. *de uno meſuagio cum pertin. in* I. *quod de nobis tenetur, noſtrâ licentiâ mediante proponit implacit' veſtræ Celſitudini Regiæ tenor. præſ. intimamus. nos noſtram. Cur. vobis inde hâc vice remiſiſſe, ſalvo nobis aliàs jure dominii noſtri in caſu conſimili, ſi acciderit. In cujus rei teſtimon' has literas noſtras fieri fecimus Patentes. Dat' apud* Lon-
don', *die, anno, &c.*

B But if the Tenant of any Lord ſue ſuch a Writ of Right in the King's Court without ſuch Letter, and recover, it
C ſeemeth the recovery is good, and the Lord ſhall not void the ſame nor the Tenant. Alſo it ſeemeth to ſtand with reaſon, that if a Man hold of any Lord as of Seignory in groſs which is not any Mannor, for which Seignory he cannot keep any Court; that then the Tenant ought to ſue ſuch VVrit as before in the King's Court, and that the Lord ſhall not have Action or other means to annul this act, becauſe he hath not any Court to hold Plea for that there. In the end of the Writ may be theſe words, *quia Dominus remiſit Curiam, &c.*

But if the Tenant will ſue forth the Writ of *Præcipe in Capite* in the King's Court for ſuch Lands as are holden of another Lord, then the Lord ſhall have a Writ out of the Chancery directed unto the Juſtices of the common Pleas, commanding them, that if it doth not appear unto them that the Lands are holden of the King, but of another, they ſhall proceed no farther on that Plea. For by this Writ the Plea ſuppoſeth the Lands to be holden of the King, and therefore he and his Heirs ſhall be concluded againſt the King for the Tenure, and the ſame ſhall be prejudicial unto the Lord of whom the Lands are holden: But by the other Writ he doth not ſuppoſe any Tenure in the Writ, and therefore there is great diverſity. *Tamen quære.*

And if a man ſue a Writ of Right directed unto the Lord of whom the Lands are holden, and he will not hold his Court to proceed upon the Writ; then the Demandant in the Writ of Right ſhall have a Writ directed unto the Lord, commanding him to hold his Court, &c. and if he will not receive the Writ, nor do right unto him, he may ſue forth a Writ commanding him to do Right, and thereupon he may have an *Alias*, and a *Pluries*, and *Attachment*, and the form of the Writ of *Attachment* is ſuch:

Rex Vic', &c. Si A *fecerit, &c. tunc pone, &c.* B. *quod ſit, &c. ad reſpondend' tam nobis quàm præfato* A. *quare cum eidem* B *per Breve noſtrum de Recto præcipimus, quod ſine dilatione plenum rectum teneret præf.* A *de uno meſuag. cum pertin' in* N, *quod* T *ei deforceat; idem* B, *Mandat' noſtrum in hac parte parvi pendens, Breve noſtrum prædict. in favorem prædict.* T *malitioſè ſuppreſſit.* Or thus: *prædict' Breve noſtrum recipere, & Curiam ſuam tenere, & eidem* A *in præmiſſ. juſtitiam facere recuſavit, in noſtri & Mandati noſtri prædict. contempt', & ipſius* A *grave dammum, ac exhæredationis periculum manifeſtum: & habeas, &c.* And upon that if the Defendant appear he ſhall be put to anſwer, &c.

But if the Lord of the Court hold his Court, but the Lord, or the Bailies, or Officer will not do him right, or delay him to have right or to make Proceſs, &c. then the Demandant may ſhew unto the Sheriff of the County how he is delayed, &c. and pray the Sheriff to award ſuch a Precept or Writ which is called a *Tolt*, directed to his Bailies, by his Precept to remove the Plea before him into his County, and upon that the Sheriff ought to award ſuch a Precept to his Baily, &c. and to go unto the Lord's Court, and there remove the matter before the Sheriff in his County. And the form of the Precept is ſuch:

Robertus

Robertus A, *Vicecomes* Norf. Edmundo C, *Ballivo Domini Regis Ducat. ſui* Lancaſtr. *de* F *ſalutem Quia ex querela* Joh. B. *ad Com. meum, ſcilicet, die Lunæ proxim'*, &c. *anno regni*, &c. *apud* Norwic. en le Shire-houſe *tentum, perſonaliter accedentis accepi, quòd ſicèt ipſe Breve Domini Regis de Recto patens, Ball. dicti Domini Regis Ducat. ſui* Lancaſt. *de* F, *in dicto Com. meo, direct', de eo, Quod ipſi plenum rectum tenerent dicto* Joh. B. *de manſ. de* F *cum pertin', quod* Joh. S *deforceat, detuliſſet* J.P. & J. C, *Ball. dicti Domini Regis Ducat. prædict. de* F *prædict'; tamen pro eo quòd dicti Ballivi favent dicto* J.S *in ea parte, & plenum rectum ſecundum exigentiam ejuſdem Brevis hucuſque diſtuler. facer'; tibi ex parte Domini Regis præcipio, firmiter injungens, quòd in propria perſona tua accedas ad Curiam Domini Regis Ducat. ſui prædict. de* F *& Loquelam quæ eſt ibidem int. præf.* Joh. B & Joh. S *per dictum Breve in Com. meo proxim. tenend. tollas, et ſummoneas per bonos Sum. prædict.* Johannem S, *quod ſit ad Com. meum* Norf. *die Lunæ proxim' futur. apud* N en le Shire-houſe *tenend', præfato* Johanni B *inde reſponſurus: & habeas ibi Loquelam prædict', Sum', & hoc Præcept', Dat. in Com. meo apud* N en le Shire-houſe, *die Lunæ proximo*, &c. *anno ſupradicto.*

And by this it appeareth, that the Demandant may remove the matter out of the Lord's Court into the County Court: and it ſeems reaſonable that the Tenant may alſo remove the matter by a *Tolt* made by the Sheriff, ſuppoſing that the Bailies of the Court do favour the Demandant in the matter, *Tamen Quære*, for the Rule in the Regiſter is, That the Tenant may remove the Plea out of the Lord's Court for good cauſe before the Juſtices in the Common Pleas; but the Demandant cannot ſo do, becauſe he may have a *Tolt* from the Sheriff, to remove it out of the Lord's Court into the County Court. [4]

A And when it is in the County, he may remove it by a *Recordare* before the Juſtices in the Common Pleas. And by this Rule it ſeems, that the Tenant cannot remove the Plea by a *Tolt* out of the Lord's Court into the County, but he ought to remove it into the Common Pleas by a *Recordare*, &c. and that for good cauſe ſhewed in the VVrit. And the VVrit of *Recordare* is ſuch: *Rex Vic'* &c. *ſalut'. Præcipimus tibi, quòd aſſumptis tecum quatuor. diſcret. & legal. Militibus de Comitat. tuo, in propria perſona tua accedas ad Cur.* A *de* B, *& in plena Cur. illa recordari fac. Loquelam quæ eſt in eadem Curia per Breve Noſtrum de Recto, inter* W *Petentem & S Tenentem, de uno meſuag. cum pertin. in* B, *& Record. illud habeas coram Juſticiar. noſtris apud* VVeſtm. *in xv. ſancti* Mich. *ſub*

ſigillo tuo, & ſigill. quatuor legalium hominum ejuſdem Cur. qui Record. illi interfuerunt, & partibus eundem diem præfigas, quòd tunc ſint ibi, in Loquela illa prout juſtum fuerit proceſſur': & habeas ibi nomina prædict. quatuor hominum, & hoc Breve. Teſte, &c. And in the end of the Writ of *Recordare*, the cauſe of the removal ſhall be put in thus: *Quia meſuag. prædict. T. Ballivo Cur' prædict', qui tenet Placita ejuſdem Cur', tanquam conſanguineo & proximo Hæredi prædict. W. deſcendere deberet poſt mortem ejuſdem T. ſi idem W. ſine hæred. de ſe obiiſſet, & idem W. illud verſus præfat. T. in Cur. prædict. diſrationaſſet, propter quod idem Ballivus favet ipſi W. in Loquela prædicta, ut dicitur; fiat Executio iſtius Brevis, ſi cauſa ſit vera, & prædict. S. hoc petat, & aliter non.*

And there are many other Cauſes put in the Regiſter of remover of this Plea into the Common Pleas at the Suit of the Tenant. As if the Lord take upon him for to maintain the matter, to have part of the Land. Or if the Tenant alledges Barſtardy, or plead a Foreign Plea, or joyn the Miſe upon the Grand Aſſiſe &c. And when the Demandant hath removed the Plea by *Tolt* into the County, then the Demandant may remove the ſame into the Common Pleas by a *Pone*, without expreſſing any Cauſe in the *Pone*. But the Tenant cannot remove it, without a Cauſe be expreſſed in the *Pone*.

B

v. 3. H. 4. 14. 32 H. 4. 13. & 17. 2 H. 7. 30. 3 & 2 P. & Ma. Dier 111.

And it is a Rule, That a *Recordare* is not given to remove any Plea in a Writ of Right, but for the Tenant. But *Pone* is given for the Defendant, but that ought to be out of the County Court. And the form of the *Pone* for the Demandant is ſuch:

C

Rex Vic', &c. *ſalutem. Pone, ad petitionem Petent', coram Juſticiariis noſtris apud* Weſtm. *in Octabis ſanct. Trin. proxim. futur', Loquelam quæ eſt in Com. tuo per Breve noſtr. de Recto inter A. Petent', & T. Tenent', de uno meſuag. cum pertin. in T. & ſumm. per bonos Summ. præd. T. quod tunc ſit tibi præf. A. inde reſponſur': & habeas ibi Sum', & hoc Breve.*

And here is not ſaid [*and another Writ*,] becauſe the Original Writ of Right Patent doth remain with the Demandant, and not with the Sheriff, &c. as do other original Writs.

D

A

And if the Tenant will remove the Plea out of the County by *Pone*, he ought to ſhew ſome cauſe in the VVrit; and the VVrit is ſuch: *Rex Vic'*, &c. *Pone coram Juſtic. noſtris apud* Weſtm. *in xv. ſanctæ* Trin. *proxim. futur', Loquelam quæ eſt in Com. tuo* &c. ut ſuprà; *& dic. præf. A. quod tunc ſit ibi, Loquelam ſuam verſus præd. T. inde proſecut', ſi*

B

volucrit:

voluerit: & habeas ibi hoc Breve. Teste, &c. Quia præd. A. duxit in uxor. W. Consanguineam Vic', &c. propter quod idem Vic. favet, &c. fiat Executio &c. ut supra.

E And in a Writ of Right in a Court Baron, if a foreign Plea be pleaded, or the Mises joyned to be tried by the Grand Assise, now if the Bailies will proceed, the Tenant may have a Prohibition directed unto them, which shall inhibit the Bailies to hold the Plea. Or he may inhibit the Lord himself, that he shall not hold the Plea, &c. And also such Writ shall be directed unto the Sheriff, forbidding him to hold Plea in the County Court upon the Writ of Right after such Pleas Pleaded; and if they do proceed, he may sue forth an *Alias*, and a *Pluries*, and at *Attachment* against them.

F And it is to know, that if the Lord or Bailies do cease to proceed in the Plea by reason of such Writ of Prohibition, then when the Justices in Eire come into the County for all Pleas, the Demandant may come into the Chancery by the Record of the Writ of Prohibition, which issued before out of the Chancery, which is always enrolled in the Chancery; and thereupon he shall have a Writ directed unto the Sheriff, to summon four Knights to chuse the Grand Assise upon the Writ of Right, which is in the Lord's Court or in the County. And the Writ of choosing the Grand Assise shall be such:

Rex Vic', &c. salut'. Summ. per bonos Summ. iiij. legales Milites de Com. tuo, quod sint coram Justic. nostris ad primam Assisam in partes illas venerint, ad eligend. super sacram. suum xij. de legal. Militibus de visn. de N. *qui melius sciant & velint dicere veritat', ad faciend. Recogn. magnæ Assis. nostræ, inter* A. *Petent. & B. Tenent' de uno mesuag. cum pertin. in* N. *unde idem B. qui Tenens est, posuit se in magnam Assis. nostram, & petiit Recognitionem fieri, uter eorum majus jus habeat in mesuag. prædict': & summ. per bonos Summ. prædict. B. quod tunc sit ibi, auditurus illam election': & habeas ibi nomina*

A *prædict. Militum, & hoc Breve.* And when the Plea is in the Common Pleas, then this Writ of *Magna Assisa eligenda* shall issue out of the Common Pleas, and is Judicial: But in the case before, it shall issue out of the Chancery, without paying a Fine. And if the Demandant sue a Writ of

B *Præcipe in Capite* in the Common Pleas for Lands holden of another Lord than of the King, then the Lord of whom the Lands are holden may sue forth a Writ directed unto the Justices of the Common Pleas, rehearsing how that the Land is holden of him, commanding them to proceed no farther, &c.

And,

And, as before is ſaid, none can ſue or maintain ſuch C
VVrit of Right Patent, but they who have an Eſtate in Fee-ſimple, as Tenant in Fee-ſimple, or Abbot, or Prior, or Biſhop, or Maſter of an Hoſpital; and a Body politick, as Major and Commonalty, or Bailies and Commonalty, &c. and ſuch Bodies politick may have ſuch VVrits for their poſſeſſions. But Parſons, Vicars, or Chantery Prieſts or Prebendaries, who have Patrons and Ordinaries over them, cannot maintain this VVrit of Right Patent, but another VVrit which is called *Juris utrum*, the nature of which VVrit ſhall be after expreſſed.

If a man bring a VVrit of Right Patent as Heir unto his D
Anceſtor, he ought to lay the Seiſin and Eſplees as in pernancy of the Profits of the Lands in his Anceſtors. And if an Abbot, Biſhop, or ſuch Body politick, bring ſuch VVrit, he ought to lay the Seiſin of the Eſplees as in pernancy of the Profits in themſelves, or in their Predeceſſors. And for the reſidue of this matter touching the VVrit of Right Patent, and the Count, and the Barrs, and all the Circumſtances thereof, ſee the title of *Droit* in the Abridgments.

And note, that a VVrit of Right, which is called *Præcipe* I
in Capite, is no VVrit of Right Patent, but is a VVrit of Right Cloſe, and ſhall be directed unto the Sheriff of the County, and lieth where the King's Tenant, who is ſeiſed in Fee-ſimple of Lands holden of the King in Chief as of his Crown, and not of the King as of any Honour, Caſtle, or Mannor, but meerly of the King as of his Crown, who is
31 H.8. Dier 44.45. a Lord in groſs, (becauſe it is holden of him who is always F
King) is deforced, &c. And this VVrit is as high in its nature as the VVrit of Right Patent; and no perſon can ſue this VVrit, if he hath not an Eſtate in Fee-ſimple of his own poſſeſſion and ſeiſin, or of the ſeiſin of his Anceſtor or Predeceſſor.

And it lieth alſo where Tenant in Fee-ſimple of any G
Lands or Tenements, who holdeth ſuch Lands or Tenement of the King in Chief as of his Crown, and not of the King as of any Honour, Caſtle or Manner, loſeth his Lands or Tenements by default in a *Præcipe quod reddat*: Now he or his Heir may have this VVrit of Right, of *Præcipe in Capite*, againſt the Tenant of the Freehold of thoſe Lands or Tenements. And this VVrit ſhall be Cloſe, and ſhall be H
directed unto the Sheriff, and returnable in the Common Pleas before the Juſtices there: and in this VVrit he ought to lay the Seiſin in himſelf, or in his Anceſtor or Predeceſſor,

Predeceſſor, in the ſame form as he ſhall do in a VVrit of Right.

I *Rex Vic.* Not', &c. *Præc. A, quòd juſtè*, &c. *redd.* B *unum meſuag. cum pertin. in* D, *quod clam. eſſe jus & hæreditat. ſuam, & tenere de nobis in capite, & unde queritur quòd prædict. A ei injuſtè deforc', &c. Et niſi fec', et prædict.* B *fec. te ſecur. de clam. ſuo proſequend', tunc ſumm. per bonos Sum. prædict.* A *quòd*, &c. Or thus, if an Abbot or other Spiritual perſons ſue the VVrit; *Quod clam. eſſe jus Eccleſiæ ſuæ Sanctæ* Marie *de* N, *et tenere de nobis in capite, et unde queritur*, &c.

K And by this VVrit it fully appears, that Lands which are holden of the King as of an Honor, Caſtle or Mannor, are not holden *in Capite* of the King, becauſe that the Writ of Right in ſuch caſe ſhall be directed unto the Baily of the Honor, or Caſtle, or Mannor, to do Right, &c. But when the Lands are holden of the King as of his Crown, they are not holden of any Mannor, Caſtle, or Honor, but meerly of the King as King, and of the King's Crown as of a Seignory by it ſelf in groſs, and in Chief above all other Seignories. And thereof it followeth, that there are many Errors and erroneous Opinions at this day in the ſuing of Liveries, and finding of Offices, and determining which Lands ſhall be taken to be holden of the King in Chief, and which not; and therefore *Quere* to know the truth. v. 21 E. 3. B. Tenures, 14. 33 H. 8. 52. there are ſome Honors of which Lands are holden in *Capite.*

L In *Præcipe in Capite* the Tenant ſhall not plead that the Tenements are not holden of the King, although the VVrit doth ſo ſuppoſe, but he ought to take the ſame by proteſtation, and plead other matter in Barr, if he have any matter to plead. 38 E. 3. 13. Br. *Droit de reliefe*, 9.

M And in a VVrit of Right he ought to count of his own Seiſin, or of the Seiſin of his Anceſtor: and if he count of the Seiſin of his Anceſtor, he may alledge the Seiſin in the time of King *Richard* the firſt, but the Seiſin is not traverſable: But the Tenant may tender a demy mark to inquire of this Seiſin, &c. And if it be found with the Tenant, that the Anceſtor was not ſeiſed, the Demandant ſhall be barred. But if the King be party Demandant, the Tenant cannot tender the demy mark to enquire of the Seiſin, but ought to plead in Barr; and there the Tenant ſhall have no Imparlance without the aſſent of the King's Serjeants. And it ſeems reaſonable, If the Tenant in a *Præcipe quòd reddat* loſe by Action tried, that yet he ſhall have a VVrit of Right.

N And ſo if the Demandant be barred in an Aſſiſe of *Mortdauncſter* brought by him, or other Real Action, as a Writ

[6.] VWrit of *Entry ſur Diſſeiſin*, &c. or ſuch Writ, and is barred by Action tried, yet he ſhall have a VWrit of Right Patent, of *Præcipe in Capite*, if the Lands be holden of the King in chief: and ſo it ſeemeth, If a man loſe by Default in a VWrit of Right before the Miſe joyned, yet he ſhall have a VWrit of Right againſt him who recovereth. But after a Miſe joyned it is otherwiſe, for then upon Default after iſſue joyned, the Judgment ſhall be final, as well againſt the Demandant by his Nonſuit, as againſt the Tenant if he make Default after.

C. 5. par. 16. If the Tenant after the Miſe joyned maketh Default, final Judgment upon that Default ſhall not be given, but a *Petit Cape* ſhall iſſue, for peradventure he may ſave his Default: but Judgment final, where it ought not to be in a Writ of Right, ſhall bind until it be reverſed.

And a man ſhall have a Writ of Right Patent of a Rent A as well as of Land.

Writ of Right in London.

WRit of Right Patent in *London* lieth of Lands or B Tenements within the City, &c. by him who claims an Eſtate in Fee-ſimple in the Lands and Tenements, and not by him who claims an Eſtate for life, or in tail, or in Dower, or by the Courteſie. For if Tenant in Fee ſimple loſeth his Lands in *London* by Default, or by Verdict, it ſeemeth that he ſhall have a VVrit of Right of thoſe Lands directed unto the Major and Sheriffs, and it ſhall be in the nature as a VVrit of Right Patent. And the form of the VVrit is ſuch:

Rex Majori & Vicecom. Lond. *ſalut'. Præcipim. vobis,* C *quòd ſine dilatione plenum rectum teneatis* E. *de* N. *de uno meſuag. & duobus ſhoppis cum pertin. in* Lond', *quæ clamat tenere de nobis per liberum Servic'*, &c. *quæ* W. *ei deforceat, nè amplius inde clamorem audiamus pro defectu recti. Teſte*, &c. And it ſhall not be ſaid in this VVrit, *Et niſi feceris, Vicecomes talis Com. faciet*, &c. becauſe the VVrit is as well unto the Sheriff of the ſaid City as unto the Major.

And the VVrit of Right Patent which ſhall be directed unto another City or Borough ſhall be of like form as the VVrit aforeſaid is, as appeareth by the Regiſter, thus:

Rex Majori & Ballivis ſuis Oxon. *ſalut'. Præcipimus vobis, quòd ſine dilatione plenum rectum*, &c. E. *de* C. *de viginti ſolid. redditûs, & paſtur. ac ſexdecim bovez cum pertin. in* N. *quæ* A. *de* B. *ei deforceat*, &c.

And

D And becauſe that the Lands and Tenemens within Cities and Boroughs are holden of the King in Burgage Tenure, it behoveth that the Writ of Right Patent be directed unto the ſaid Major and Sheriffs, or Bailies, as Bailies and Officers of the King, as if Lands were holden of the King as of any Honor, or Caſtle, or Manner.

E And alſo upon a VVrit of Right ſued in *London* the Plea ſhall not be removed by *Tolt*, or *Pone*, or *Recordare*, as another VVrit of Right ſued in the Court of another Lord ſhall be. But if the Tenant in the Writ of Right in *London* vouch a Foreiner to Warranty, the Demandant ſhall come into the Chancery, and ſhall ſue a *Summ. ad warrantizandum* in the Common Pleas before the Juſtices at a certain day, and another Writ unto the Major and Sheriffs, to ſend the Record before the ſaid Juſtices at the ſame day, &c. and then the Major and Sheriffs do adjourn the parties before the Juſtices of the Common Pleas at a certain day, and alſo at the ſame day ſhall ſend the Record which is before them before the ſaid Juſtices; and when the *Juſtices* have determined the VVarranty, they ſhall ſend back the Record by Writ which ſhall iſſue out of the Rolls of the Juſtices, directed unto the Major and Sheriffs, commanding them to proceed in the Plea within the ſaid City. And the ſame is by the Stat. of *Glouceſter de Forinſ. vocat. ad Warrantum, cap.* 12. And ſo ſhall it be done if the Tenant plead a Foreign Plea, the Plea ſhall be removed as aforeſaid; and when the matter of the Plea is determined, then ſhall it be ſent back unto the Major and Sheriffs as aforeſaid, by the equity of the ſaid Statute.

F And by the Rule in the Regiſter, every *Præcipe quòd reddat* of Plea of Lands or Tenements in *London* ſhall be directed unto the Major and Sheriffs joyntly: But every other Writ ſhall be directed unto the Sheriffs only.

And now it is a common opinion, That if a man hath Title to have a *Formedon* of Lands or Tenements in *London*, or any other Action Real, as a Writ of *Entry ſur Diſſaiſin*, or other Writ whatſoever of Lands or Tenements, he ought to ſue this Writ of Right Patent directed unto the Major and Sheriffs of *London*, that they ſhall do right, &c. and that the Demandant upon this Writ ſhall make his Proteſtation to ſue it in the nature of what Writ he will, as a man ſhall do upon a Writ of *Droit cloſe* ſued in Ancient demeſn. But it ſeemeth the Law ſhall not be ſo; for this Writ is a Writ of Right Patent, which is directed unto the Major and Sheriffs, as other Writs directed unto another

City

City or Borough are. And I have not heard that a man shall make protestation to sue such VVrit Patent in the nature of what VVrit he will. But the City of *London* by their Custom have power to hold Pleas of Lands within the City by other the Kings VVrits as well as by Writ of Right Patent, and that appeareth by the Register.

7 H.6.32. 8c.37 H.6. 27. But *Plow.*124. *Sewsford*, contrary.

And it appeareth, that *London* is not Ancient demesne, G for then the VVrit of Right which shall be directed unto the Major and Sheriffs should be Close, and not Patent. And it appeareth by the Register, in the title of *Juris utrum*, that a *Juris utrum* was sued of Tenements in *London* returnable before the Justices of the Common Pleas.

And also it appeareth in the Register, in the Title of Writs of Waste, in the end of the Title, that a VVrit of *Partic. faciendo* was directed unto the Major and Sheriffs of *London*, to make Partition of Tenements in *London*; and also there followeth a VVrit of *Estrepement*, sued and directed unto the Sheriffs of *London*, upon a VVrit of *Juris utrum* depending before the Justices of the Common Pleas of Tenements in *London*. [7.]

And it appeareth in the Register, a Writ of Justicies of A Dower sued in *London* for Lands in *London* was directed unto the Major and Sheriffs of the City, and a special VVrit for the Heir in tail for Lands in *London* directed unto the Major and Sheriffs there, upon a Devise made of the Lands unto his Ancestor in tail, &c. And the like Writ for him in the Remainder in tail, and also for him in the Reversion. And the like Writs upon Devises made in other Cities and Boroughs by some persons to others, &c. And these Writs are in the Register after the Writ of *Formedon* in the Remainder, *Fol.*244.

And by these VVrits it appeareth, that a VVrit of Right Patent, which is directed unto the Major and Sheriffs of *London*, is not such a VVrit as a man shall declare thereupon in the nature of what Writ he will, &c. as it shall be upon a VVrit of *Droit* Close sued in Ancient demesn; but that it behoveth to sue in *London* his VVrit in the nature of such VVrit as his Case requireth, &c. But *Quære veritatem* of that which was used in ancient times in *London*.

And it appeareth in the Register, that the King shall have B a VVrit of Escheat retornable into the King's Bench, for Lands in *London* escheated unto the King; and by the same reason another man shall have a Writ of other nature, there returned in the Common Pleas. But the King hath a prerogative in this matter before others, to sue in what Court he

he will; but he cannot alter or change the nature of the Writ, otherwise than the Law giveth the same to him and others, and therefore *Quære* of this matter.

C There is also another Suit which lieth in a City or Borough for Lands or Tenements, by Usage and Custome of the City, and that is by Bill without any Writ out of the Chancery; and the same is called a Bill of *Fresh force*, or an Assise of *Fresh force*, and lieth only where a man is disseised of his Lands or Tenements in any City or Borough, or deforced of any Lands or Tenements after the death of his Ancestor, or after the death of his Tenant for life, or in tail, or in Dower, or the like; now within xl. days after the Title accrued unto him, he may sue this Bill of *Fresh force*, and shall make protestation to sue in the nature of what Writ he will, as Assise *de Mortdauncestor*, or Assise of *Novel Disseisin*, or *Intrusion*, or of *Formedon*, or in the nature of any other Writ, as his Case doth require: But after the xl. days past after the Title accrued unto him, he ought to sue a Writ out of the Chancery, directed to the Mayor and Sheriffs of *London*, as the case lieth.

D And also it appeareth by the ancient Treatise of *Natura Brevium*, that if a Foreiner sue an Assise, or other *Præcipe quid reddat* of Lands in *London* in the Common Pleas, &c. that the Mayor and Sheriffs, &c. may demand Conusance, &c. And therefore it seemeth, if they do not demand Conusance of the Plea, but suffer the Recovery to pass in the Common Pleas before the Justices, that then the Recovery is good in the Common Pleas for the Lands in *London*. And when the Mayors and Bailiffs shall demand Conusance of Pleas, and when not, and when they have forceased their times appeareth in the Title *Conusance*, in the Abridgements, more at large; and therefore see there.

Writ of Right of Dower.

E THe Writ of Right of Dower is Patent, and shall be directed unto the Heir, to sue in the Court of the Heir, as it appeareth by *Britton*. And where the Writ is directed unto the Heir of the Husband, and the same Heir is seised of the Land whereof the Wife demandeth Dower, then if he will not assign Dower unto the Feme, the Feme who is Demandant may remove the same by a *Tolt* into the County, and also may remove the same out of the County into the Common Pleas by a *Pone*, &c. without shewing of any cause in the Writ, as the Demandant shall do in a Writ of Right Patent.

Patent. But the Tenant in a VVrit of Right Patent shall not remove the Plea out of the County into the Common Pleas, without shewing of cause in the *Pone*. And the Tenant in a Writ of Right Patent, or in a VVrit of Right of Dower, may remove the Plea into the Common Pleas by a *Recordare* out of the Court of the Lord, upon cause shewed in the VVrit. And what causes are sufficient and good to remove the Plea out of the Lord's Court, or out of the County, and what not, does appear in the Register; and therefore see the Causes there. But the Demandant cannot remove the Plea out of the Court of the Heir by a *Pone*, because he ought first to remvoe it by a *Tolt* into the County, and from the County he may remove it into the Common Pleas by a *Pone*, without shewing of cause in the VVrit, as before is said.

And in a VVrit of Right Patent the Plea may be removed at the Tenants suit by a *Recordare*, out of the Lord's Court, into the Common Pleas, before the Justices there: and by the same reason it seemeth that it may be removed at the suit of the Tenant, in a Writ of Right of Dower, out of the Heir's Court into the Common Pleas, before the Justices there, by a *Recordare* for good cause. But *Quære*.

And if the Husband do enfeoff a stranger of all his Lands, and dieth, and his Heir hath nothing by descent; now if the Feme be to sue forth a Writ of Rright of Dower, it seemeth that she shall sue her Writ of Right of Dower directed unto the same Feoffee, &c. for after the Endowment the Feoffee shall be her Lord, and she shall hold the Dower of him by Fealty. But before the Statute *de Quo Emptores terrarum*, If the Husband enfeoff a Stranger of parcel of his Lands, &c. to hold of him, then if the Feme be to sue a Writ of Right of Dower against the Feoffee, the Writ shall be sued in the Heir's Court, and the Writ shall be directed unto the Heir, for the Seignory that remaineth in him. [8]

And so if the Husband at this day giveth parcel of his Mannor in tail to hold of him, and dieth, the Feme shall sue her Writ of Right of Dower in the Court of the Heir of her Husband against the Donee in tail, and the Writ shall be directed unto the Heir: But if the Husband make a Gift in tail of all the Land that he hath, and dieth, and the Feme is to sue a Writ of Right of Dower of that Land; then the Husband's Heir cannot have any Court, because he hath but a Seignory in gross; and therefore it stands with reason that she should have her Writ of Right of Dower against the Donee in tail directed unto the Sheriff, returnable in the

the Common Pleas, and ſhe ſhall have this Clauſe in the VVrit: *Quia B. capitalis Dominus Feodi illius, nobis inde remiſit Curiam ſuam.*

B And ſo if the Husband make a Leaſe of all his Lands unto a ſtranger for life, and dieth, and the Feme is to bring a VVrit of Right of Dower againſt the Leſſee for life; then it ſeemeth reaſonable that the Feme have her VVrit of Right of Dower againſt the Leſſee for life in the Common Pleas, becauſe that he in the Reverſion hath not any Court. And although that this Clauſe, *viz. Quia B. capitalis Dominus*, &c. be put in the VVrit, if the Lord have not any Court to hold, becauſe it is a Seigniory in groſs, and not any Demeſn Land to hold a Court, &c. then, although the Lord did never remit his Court, and that there is not any matter apparent or remaining in the Chancery, to prove the Lord's will and aſſent to remit his Court, yet the VVrit returned into the Common Pleas, before the Juſtices there, is good; and they ſhall proceed thereupon, if the Lord hath not any Court to hold Plea for this matter.* And it ſeemeth that the Lord ſhall not have his Action againſt the Demandant for ſuing the VVrit in the Common Pleas, if he hath no Court to hold Plea thereupon, and to do right unto the party. But if the Lord hath a Court to hold Plea, then he may have a Prohibition to the Juſtices of the Common Pleas, that they do not proceed upon the Plea, otherwiſe not. *Quære* of this matter.

C And this VVrit of Right of Dower lieth where a Feme is endowed of parcel of her Dower, and ſhe would demand the reſidue againſt the ſame Tenant, and in the ſame Town, then ſhe ought to ſue this VVrit of Right of Dower; for the words of the other Writ will not ſerve, *viz. unde nihil habet*, becauſe that ſhe hath received part of her Dower; and therefore of neceſſity it behoveth her to ſue this VVrit of Right of Dower, to recover the reſidue: and the VVrit ſhall be directed unto the Heir, or unto his Gardian, if he be in VVard, as a VVrit of Right Patent ſhall be, &c.

D And if a Feme loſe her Land which ſhe holdeth in Dower by Default in a *Præcipe quod reddat*; yet, according to the opinion of ſome men, ſhe ſhall have a VVrit of Right of Dower. But it ſeemeth, by the Equity of the Statute of *Weſt.* 2 *cap.* 4. that if a Feme loſe by default the Land whereof ſhe hath had Dower, that by that Statute ſhe ſhall have a *Quod ei deforceat* to recover the Land; and before that Statute ſhe had no remedy for to recover the Land, but only an Action of *Diſceit*, if ſhe were not ſummoned in this VVrit of Right of Dower.

And if a Feme hath Dower, and loſe the ſame by Aſſize or Action tried, it ſeemeth ſhe hath not any remedy but only by Attaint; for it ſeemeth that ſhe ſhall not have remedy to recover by a Writ of Right of Dower, becauſe ſhe had the Land once aſſigned unto her in Dower, and ſhe was in poſſeſſion of the ſame, ſo that the Title was executed, and ſhe ought to ſue an Action of her own Poſſeſſion, if ſhe be afterwards deforced. *Tamen Quære.* And after the Plea removed unto the Common Pleas, the Proceſs is then *Grand Cape* & *Petit Cape*. And in the Heir's Court the manner is to make a Precept in the nature of Summons, and of *Grand Cape* and *Petit Cape*, and the VVrit directed unto the Heir is ſuch:

Rex A *ſalutem. Præcipim. tibi, quòd ſine dilatione plenum rectum teneas* B, *quæ fuit uxor* C, *de tertia parte decem acr. terr. cum pertinen. in* VV, *quam clamat tenere de te in dote, per liberum Servic. tertiæ partis unius denarii per annum pro omni Servic', quam* C *ei deforceat*, &c.

And alſo a Feme may have a VVrit of Right of Dower of the moiety, according to the uſage of *Gavelkind*, where ſhe hath received part, and is deforced of part. And alſo it appeareth by the Regiſter, that the Feme ſhall have a VVrit of Right of Dower directed unto the Heir himſelf, where he himſelf deforceth her of the profits of an Office: and the VVrit is ſuch:

Rex A. *ſalutem. Præcipimus tibi, quòd plenum rectum teneas* A, *&* R. *uxor. ejus, de tertia parte exituum provenient. de cuſtodia Gaolæ Abbatiæ* VVeſtm, *& de tertia parte trium rodarum terræ, unius rodæ prati, et redditûs tot panum, et tot lagenarum cervis. vel tot ſeculorum per diem, vel per ſeptimanam, vel per annum, cum pertinen. in Vill.* VVeſtm', *quas clamat pertinere ad liber. Tenementum ſuum, quod tenet in dote ipſius* R *in ead. in Vill'*, *et tenere de te per liber. Servic', inveniend. tibi tertiam partem cuſtod. pro cuſtodia Goal. prædict', et portæ ejuſdem Abbatiæ pro omni Servic', quæ ipſe eis deforc'*, &c.

[9.] And by this VVrit it appearth, that a Feme ſhall have a VVrit of Right of Dower of that thing which is appendant or appurtenant unto the Land which ſhe holdeth in Dower, &c. if ſhe be deforced thereof.

Writ of Right de rationabili parte.

A VVrit of Right *de rationabili parte* always lieth betwixt Privies in blood, as betwixt Brothers in *Gavelkind*, or betwixt Siſters and other Coparceners, as Nephews and Neeces,

Neece, and lieth for Lands in Fee-ſimple: As if the Auncestor leaſe his Lands for term of life, and dieth, and hath iſſue two Daughters, and afterwards the Tenant for life dieth, and one Daughter entreth into the whole Land, and deforceth her Siſter of the Land; her Siſter ſhall have this VVrit of Right *de Rationabili parte*: and ſo if the Auncestor were diſſeiſed of Lands, and dieth, and one Siſter entreth into the Land, and deforceth her Siſter thereof; the Siſter who is deforced ſhall have this VVrit againſt her other Siſter. And ſo two or three may ſue this VVrit againſt the fourth Siſter, or the Aunt and the Neece may ſue this VVrit againſt
C that Siſter which deforceth her of her part, &c. And this VVrit lieth as well upon a dying ſeiſed of the Auncestor, if
D one Siſter enter upon all, and deforce the other Siſters, as
E where the Auncestor doth not die ſeiſed: and the VVrit is a
F VVrit of Right Patent, and ſhall be directed unto the Lord of whom the Lands are holden, as other VVrits of Right
G Patent ſhall be, and ſhall be removed by *Tolt* and other VVrits, as the Common VVrit of Right ſhall be. But Grand Aſſize, nor Battail ſhall be joyned in this Writ, for the privity of the blood that is betwixt them. Neither ſhall this Writ be ſued againſt a ſtranger, and if it be, it ſhall abate. And if the Auncestor die ſeiſed, and one Siſter entreth into all the Land, and forceth her Siſters, the others may ſue this Writ of Right *de rationabili parte*, or a Writ of *Nuper obiit*, at their election. And ſo it is for Lands in Gavelkind; if one Brother entreth into all the Lands, and deforceth his Brethren, they may ſue this VVrit of Right *de rationabili parte*, or a *Nuper obiit*, if the Auncestor die ſeiſed: but if the Auncestor doth not die ſeiſed, then they ought to ſue this VVrit *De recto de rationabili parte*. But againſt a Stranger, it behoveth to ſue *Aſſiſe de Mortdauncester*, upon the death of their Auncestor, or other VVrit (as their Caſe ſhall require) of the Seiſin of their Auncestor. And the form of the
H VVrit of Right *de rationabili parte* is ſuch.

Rex A. B. *ſalutem. Præcipimus tibi, quòd ſine dilatione plenum rectum teneas* VV. F. *de decem acris terræ cum pertin. in* F. *quas clamat eſſe rationabilem partem ſuam, quæ eam contingit de libero tenemento quod fuit* I. *patris, vel matris, avunculi, vel amitæ, conſanguinei ſui, in ead. villa, et tenere de te per liberum Servic. tertiæ partis, vel quart. partis unius denarii per annum pro omni Servitio, quæ* B. *et* S. *ei deforceant.*

And by the Regiſter, in this VVrit a man may ſee what Rent and Services all the Land which is partable betwixt the Siſters ſhall yield and pay unto the chief Lord, and accord-

ingly put every one of the Heirs to her part. So if there be one Demandant, and two Deforceants, then thus: *Quod clamat tenere de te per liberum Servitium tertiæ partis tanti per annum.* And if there be two Demandants, and two Deforceants, then thus: *Quod clamat tenere de te per liberum Servic. medietatis*, Or *duarum partium tanti per ann. pro omni Servitio.* And if all the Land be holden by 4 d. *per annum* and Fealty, and there are two Demandants, and two Deforceants, then the Writ may be: *Quod clamat tenere de te per liberum Servic. duorum denar. per ann. pro omni Servic'*, &c.

And if there be two Sisters, and after the death of the Aunceſtor they enter, and occupy in common as Coparceners, and one of them deforce the other Siſter to occupy that which is appendant or appurtenant to the Tenement which they have in Coparcenary; then ſhe who is deforced ſhall have a VWrit of Right *de rationabili parte*, againſt her Siſter, of that which is ſo appendant or appurtenant, and the Writ for that ſhall be ſuch: *Quod clamat pertinere ad liberum Tenementum ſuum quod de te tenet in eadem villa, & tenere debet de te per liber. Servic. tanti pro omni Servic. quod* VV. &c. And in this VVrit he ſhall make his demand of a certain portion of Land, as to ſo much as his Plea doth amount unto, to hold in ſeveralty: as if the Aunceſtor die ſeiſed of twenty acres, and hath two Daughters, and one entreth into the whole, and deforceth her Siſter; the other Siſter ſhall demand by her Writ ten acres of the twenty acres, becauſe that ſuch is her part; and by this Writ if ſhe recover, ſhe ſhall have Judgment to recover ten acres, to hold in ſeveralty, as her part doth amount unto.

And this Writ of Right *de rationabili parte* ought to be brought againſt all the Coparceners that hold the Land, &c. and by all thoſe that are deforced of the Land, as it appeareth by *Britton*: and Voucher and View do not lie in this Writ, becauſe of the privity of blood; but in a *rationabili parte* the View was granted *H.* 15 *H.* 5. becauſe that the Aunceſtor did not die ſeiſed, &c. And Nontenure is no Plea in this Writ by *Britton*, &c. And the Proceſs in this Writ, after it is removed into the Common Pleas, is Sum. *Grand Cape & Petit Cape*; and in the Lord's Court the manner is to make Proceſs in the nature of *Grand Cape & Petit Cape*, &c.

[20.] And the Heir of one Coparcener may ſue this Writ of Right *de rationabili parte* of the Seiſin of the common Aunceſtor, which was of the Seiſin of his Aunceſtor in the time of King *R.* 1. or *H.* 3. or of the Seiſin in the time of King *John*, or other Kings after that time, if he can prove it. As a man

ſhall

ſhall have a Writ of Right Patent of the Seiſin of his Auncestors in ſuch times, &c. But if one Coparcener claim the Land by a Feoffment made unto her by her Auncestor in fee, now if the other Coparcener deforce her of the Lands, ſhe may have a Writ of Right Patent againſt her Siſter for the Land, and ſhall joyn the Miſe by Grand Aſſiſe, or by Battail, becauſe ſhe doth not there claim the Land as Heir to her Auncestor, as it ſeemeth: *Tamen Quære.* Com. 306. no Battail lieth betwixt them.

B And if a man hath iſſue two Daughters, and dieth ſeiſed of Lands in tail, and one Daughter entreth into the whole, and deforceth her Siſter; there the Siſter may have a *Formedon* againſt the other Siſter, and not a *Nuper obiit*, nor this Writ of Right *de ratiocinabili parte*, for this Writ lieth properly for the Lands in Fee-ſimple.

Writ of Nè injuſtè vexes.

C WRit of *Nè injuſtè vexes* lieth in caſe where Lord and Tenant are, and the Tenant hath holden of the Lord and his Auncestors by Fealty, and 20 s. rent yearly, and of late time the Lord hath gotten Seiſin of greater and more Rent of the Tenant, by payment of the Tenant of his own agreement without coercion of Diſtreſs: Now if the Lord will diſtrain the Tenant for this ſurpluſage of Rent, the Tenant cannot avoid the Lord in an Avowry, for the Seiſin which the Lord hath had by the payment of the Tenant of this Rent of his own agreement. But the Tenant may ſue this Writ of *Nè injuſtè vexes* directed unto the Lord; which Writ is in it ſelf a prohibition unto the Lord, that he do D not diſtrain his Tenant to do other Services than of right he ought to do. And this Writ in its nature is a Writ of Right, and ſhall be Patent; and this clauſe, *Et niſi feceris, Vicecomes, &c.* ſhall be put into the Writ. And the Proceſs in this Writ is, *Prohibition*, *Attachment*, and *Diſtreſs* againſt the Lord, commanding him that he ſhall not diſtrain, &c. And E this Writ is founded upon the Statute of *Magna Charta cap.* 10. which willeth, *Quòd null. diſtring. ad faciend. majus Servic. de Feodo Militis, nec de alio libero Tenemento, quàm indè debetur.* And the form of the Writ is ſuch: C. 4. part 11. Bevil's Caſe.

F *Rex A. ſalutem. Præcipimus tibi, Nè injuſtè vexes vel vexari permittas B. de libero Tenemento ſuo, quod de te tenet in* I. *nec indè ab eo exigas, vel exigi permittas Conſuetud. vel Servitia quæ indè facere non debet, nec ſolet: & niſi feceris, Vic.* Lincoln. *idem fieri faciet, nè amplius indè clamorem audiamus pro defectu recti.*

And this VVrit is always Auncestred, *viz.* where the Tenant and his Auncestors have holden of the Lord and his Auncestors by Fealty and 20 ſhillings Rent, or other Rent and Service; and of later time the Lord hath encroached divers other Services or Rents, by payment of the Tenant, or doing of other Services which he ought not to do unto the Lord; then the Tenant may ſue this VVrit: for by encroachment of Rent by the Lord by payment of the Tenant, the Tenant ſhall not avoid the ſame in an *Avowry* by the Lord for that Rent which is ſo encroached. But if the Lord do encroach other Services which the Tenant of right ought not to do unto him, as Homage, or Eſcuage; then the Tenant may avoid this encroachment in Avowry by the Lord for theſe Services, becauſe the Tenant may traverſe the manner of the Tenure in that Caſe, as to ſay, that he holdeth of the Lord by Fealty and 20 s. Rent only, without that that he holdeth by Homage, Fealty and Rent, in manner and form as the Avowry is made: Or the Tenant may ſue this Writ of *Ne injuſtè vexes* in that caſe if he will. And if the Lord do diſtrain to do other Services after the Prohibition delivered unto him, or to pay more Rent than of right he ought to pay, then the Tenant ſhall have an Attachment againſt the Lord returnable in the Common Pleas, or in the King's Bench. And when the Lord cometh upon the Attachment, then the Tenant ſhall count againſt him in this manner.

But otherwiſe in Aſſiſe of Rent, or in a Writ of Reſcous, or Ceſſavit, for the Tenure is traverſable in theſe Writs. 22 E. 4. 7. 22 Aſſ. 68. Thorpe.

20 H. 7. 11. 26 H. 8. 6. Com. 45. & 94.

B. ſheweth unto you, That whereas he holdeth of the aforeſaid *A*, &c. as of his Mannor of *C.* 20 Acres of Land with the appurtenances in *W.* by Homage, Fealty, and by the Service of the twentieth part of a Knights Fee, and by the Services to render to the ſaid *A.* half a pound of Pepper yearly at the Feaſt of *All Saints*, for all manner of Services; yet the aforeſaid *A.* over the Services aforeſaid, vexeth the ſaid *B.* and ſuffereth him to be vexed, and of him demandeth and diſtraineth, and ſuffereth him to be diſtrained for 9 l. *per ann.* of Rent, for which he is damnified unto his damage of 20 l. And ſo note, that he ſhall declare of damages in this Writ; and then upon this Count, the Lord who is Defendant ſhall make his defence, and ſhall defend the wrong and force &c. and ſhall count againſt the Plantiff, and ſhall ſay that he doth not torciouſly demand the ſaid Rent of 9 s. over the other Services, &c. for he ſhall ſay that the ſaid *B.* holdeth the ſaid 20 Acres of Land, &c. of him by the ſaid Rent and Services, &c. and that he the ſaid *A* was ſeiſed as well of the ſaid Rents of 9 s. as of all the other Services aforeſaid

aforeſaid, by the hands of the aforeſaid B. as by the hands of his very Tenant for the ſaid 20 Acres of Lands with the appurtenances, as of fee and of right in time of peace, *viz.* in the time of King *Edward* late King of *England*, &c. in taking of the Eſplees, *viz.* Rents, &c. And that ſuch is his right, he is ready to make good by his Body, &c. [11.]

A And thereupon he who is Plaintiff in the *Nè injuſtè vexes* ſhall defend this Count, and thereof ſhall put himſelf upon the Grand Aſſiſe, and ſo the Miſe ſhall be joyned betwixt them in this VVrit, which is at firſt but a Prohibition, &c.

B And Judgment final ſhall be given upon this VVrit after the Miſe joyned, if it paſs againſt any of the Parties; or if any of them be Nonſuit, or make Default after the Miſe joyned. And ſee the form of the Count, and of the Defence in this VVrit, in the Book of *Entries of Pleas*, fo. 90. on the firſt page.

C And it appeareth *M.* 18. *E.* 2. that the Feoffee ſhall not avoid Seiſin of Rent had by encroachment of his Feoffor, nor ſhall he have a VVrit of *Nè injuſtè vexes*; nor a man ſhall not have a VVrit of *Nè injuſtè vexes* againſt the Grantee of the Seigniory, as appeareth *P.* 10. *E.* 3. 14 H. 4. 5 ac. by Thirning and after 163.

D And *Trin.* 20. *E.* 3. it appeareth that Tenant in tail ſhall not have *Nè injuſtè vexes*, &c. but he ſhall plead, and ſhew the matter, and ſhall not be eſtopped by the payment and Seiſin had by the hands of his Auncеſtors; but by a Seiſin had by his own hands he ſhall be bound during his time in Avowry, as it ſeemeth. But after the Miſe joyned in a VVrit of

E *Nè injuſtè vexes* ſued, if the parties imparle until another term and day, and after at this term at the day the Lord who is the Defendant in the *Nè injuſtè vexes* make Default, now what Proceſs ſhall be awarded thereupon, or if Judgment ſhall be given upon this Default without any Proceſs, *Quære.* And ſo if the Plaintiff at another Term after the Miſe joyned and day given, &c. make Default, it ſeemeth he ſhall be Nonſuit, &c.

Writ De Recto clauſo.

F WRit of *Droit cloſe* is a VVrit which is directed unto the Lord of Ancient demeſn, and lieth for thoſe Tenants within Ancient demeſn who held their Lands and Tenements by Charter in Fee-ſimple, or in Fee-tail, or for Life, or in Dower; if any of them be ouſted of his Lands or Tenements, or Diſſeiſed &c. he or his Heir may ſue this VVrit of *Droit cloſe* directed unto the Lord of Ancient demeſn, commanding him to do right, &c. in his Court; and the form of the VVrit is ſuch:

Henricus Dei gratiâ, &c. Ballivis ſuis de I. *ſalut'. Præcipimus* G
vobis, quòd ſine dilatione, & ſecundum Conſuetud. Manerii noſtri
de I. *plenum rectum teneatis* A. *de uno meſuagio cum pertin. in* I.
quod B. *ei deforc', nè amplius indè clamorem audiamus pro de-*
fectu recti. Teſte, &c. And another Writ thus:

Rex Ballivis ſuis Caſtri de Bamburg. *ſalut'. Præcipimus, &c.* H
quòd, &c. ſecundum Conſuetud. Manerii Caſtri de Bamburg.
plenum rectum teneatis de duabus partibus piſcariæ aquæ de I.
in Pamburg. *quas* B. *ei deforc', &c.* And the order of putting
the parcels of Houſes, Lands Meadows and Paſture, &c. ſhall
be obſerved and uſed as ſhall be done in a Writ of Right
Patent. And this Writ may be ſued of Common of Paſture, I
and for ſtopping of a Way, and ſuch like. And the Writ for
the Common is ſuch:

Rex, &c. Præcipimus tibi, quòd plenum rectum teneas, &c. de K
Comm. paſturæ in T. *quæ pertinet ad unum meſuag', & x. acr.*
terræ, quæ ſecund. Conſuetud. Manerii præd. tenet in eadem villa,
quas B. C. & D. *ei deforc'.* And for ſtoppings of a Way the
Writ is ſuch:

Rex Ball. Epiſcopi Covent. & Litch. *de Maner. de* C. *ſalutem.* L
Queſtus eſt nobis R. *quòd* W. *injuſtè & ſine judicio obſtruxit*
quandam Viam in D. *quæ eſt infra præcinctum ejuſdem Maner.*
ad nocumentum unius meſuagii, quod idem R. *ſecund. Conſuetud.*
Maner. præd. ten. in eadem Vill': & ideò vobis præcipimus,
quòd vocatis coram vobis partibus prædict', auditiſque hinc in-
dè rationibus, eidem R. *in præmiſſ. debitum & feſtinum juſtitiæ*
complementum fieri faciatis, prout ſecundum Conſuetudinem Ma-
nerii prædict. fuerit faciend', &c.

And note, that the demeſn Lands of a Mannor, and the M
Mannor it ſelf which is called Ancient demeſn, is pleadable
at the Common Law; and a man ought to ſue his Action
for the Mannor; and for the Lands which are parcel of the
Mannor, at the Common Law, and in the Common Pleas.
But if a man will ſue for the Lands which are holden of the
Mannor, which are in the hands of a free Tenant who hold-
eth of the Mannor, for theſe Lands he ought to ſue this
Writ of *Droit cloſe* directed unto the Lord of the Mannor,
and there he ſhall make his proteſtation to ſue in that
Court the ſame Writ in the nature of what Writ he will
declare. And the form of Entry when ſuch Writ is brought
in Court is ſuch:

Ad hanc Curiam venit R. N. *per* Nich. B. *Attornatum ſuum, per* N
Literas Patentes ipſius R. & liberavit præfatis Ballivis quod-
dam Breve Domini Regis nunc clauſum, eiſdem Ballivis dire-
ctum, in forma juris ſecundum Conſuetud. Manerii præd', exe-
quend'. cujus tenor ſequitur in hæc verba:

Hen-

Henricus &c. *Ballivis* L. de S. *ſalutem. Præcipimus vobis quòd juſtè & ſine dilatione, & ſecundum Conſuetudinem Manerii de* G. *de* S. *plenum rectum teneatis* Robert N. *de duobus meſuagiis, &c. in* VV. *&* H. *quæ* P. *&* C. *ei deforceant, nè amplius indè clamorem audiamus pro defectu recti. &c. Et ſuper hoc præd.* Robertus N. *invenit Pleg. de proſequendo Breve ſuum præd' ſcil.* T. *&* W. *& proteſtatur proſequi illud Breve in eadem Cur. in forma & natur. Brevis Aſſiſæ novæ Diſſeiſinæ ad Communem Legem, ſecundum Conſuetud. Manerii præd', dicens quòd præd.* P. *&* C. *injuſtè & ſine judicio diſſeiſiverunt eum de libero Tenem. ſuo in* W. *&* H. *viz. de Tenementis præd. cum pertin. poſt primam, &c. Et pet. inde proceſſum fieri ſecundum Conſuetud. ejuſd. Man. præd', &c. Ideo ſecundum Conſuetud. ejuſd. Man. præcept. eſt* T. H. *ſub-ballivo Man. illius, & miniſtr' hujus Cur', quòd facer. Tenementa illa reſeiſir. de catallis quæ in ipſo capta fuer', & ead. Tenementa cum pertin. eſſe in pace uſque ad proxim. Cur', coram præfatis Ballivis & ſectatoribus ejuſdem Cur', viz. die jovis proxim. futur. hic. ſc. apud* S. *tenend'; & interim faciat* xii, *liberos et legales homines de viſn. de* W. *et* H. *præd. infra præcinctum Manerii prædicti videre Tenementa præd', et nomina eorum imbreviari facere. Et quòd ſumm. eos per bonos Summ', quod tunc ſint hic, ſcil. apud* S. *parati indè facere Recognitionem; Et quod ponat per vadios et ſalvos plegios prædict.* P. T. *Ballivum ſuum, ſi ipſe inventus non fuerit, quòd tunc ſit hic apud* S. *ad audiendum illam recognitionem, &c. Et quòd tunc habeat ibidem nomina Pleg. Summ', et dictum præceptum ſibi indè direct. Et idem dies datus eſt præf.* R. N. *hic. &c.* [12.]

See all this form to make proteſtation in the Book of Entries of Pleas, *fol.* 115. And then at the day of the Precept and Proceſs returned, the Defendant ought to appear and plead in Bar, or unto the VVrit, or other matter, in ſuch form as ſhall be in an Aſſiſe at the Common Law. And if the Proteſtation be made in the nature of another VVrit, then the Precept ſhall be according unto the nature of the Proceſs which is given in ſuch VVrit; and the Tenant when he cometh in ſhall plead as he ſhall do in ſuch VVrit ſued againſt him at the Common Law, for the nature of the Proteſtation doth alter and change the manner of pleading for the Tenant.

A And if falſe Judgment be given in this VVrit, the party Tenant or Demandant may ſue a VVrit of falſe Judgment thereupon.

B But he who holdeth Land in Ancient demeſn by Copy of Court Roll, at the will of the Lord, who is called Tenant by baſe Tenure, if he be ouſted of his Lands or Tenements there

there in Ancient demeſn, he ſhall not have this VVrit of *Droit cloſe*, but he ought to ſue by Bill in the Court of the Lord of the Mannor, and ſhall make proteſtation to ſue there in the nature of what VVrit he will. But if falſe Judgment be given againſt him in that Court, he ſhall not have a VVrit of falſe Judgment thereupon at the Common Law, nor other remedy, but to ſue unto the Lord by way of Petition, as it appeareth in *H.* 14. *H.* 4. For thoſe who hold their Lands in baſe Tenure in Ancient demeſn, or by the Rod, hold them in Villenage, and they ſhall not have ſuch Writ of *Droit cloſe*, nor a Writ of falſe Judgment, &c. See the Stat. of 1 *R.*2. *cap.*6. of that matter.

Lit. 6 ac. 34 H.4.34. 7 E.4.19.

C

And this term, which is now at this day called Copy-tenants or Copy-holders, or Tenants by Copy, is but a new-found term, for of Ancient times they were called Tenants in Villenage, or of baſe Tenure; and that appeareth by the ancient Tenures that thoſe who held by the Rod, or in baſe Tenure, or by Copy of Court Roll, were then called and named Tenants which held in Villenage: for Tenants by Copy of Court Roll are not ſpecified, nor named by ſuch name; but yet at that time there were ſuch Tenants, but then they were called Tenants in Villenage or of baſe Tenure.

D

And when the Writ of *Droit cloſe* cometh unto the Lord, or unto his Bailies, the Lord ought for to hold his Court, and to proceed thereupon according to Law, &c. And if the Lord will not hold his Court, then the Demandant may ſue a Writ out of the Chancery directed unto the Lord, commanding him to hold his Court, &c. And if he will not hold it, then the Demandant may ſue an Attachment againſt the Lord directed unto the Sheriff, returnable in the Common Pleas, or Kings Bench, and thereupon the Demandant ſhall recover his damages.

And if the VVrit of *Droit cloſe* be directed unto the Bailies, &c. and they will not hold the Court, then he may ſue ſuch a Writ unto the Bailies, commanding them to hold their Court; and if they will not ſo do, he may ſue an Attachment againſt them directed unto the Sheriff, returnable as aforeſaid, &c.

E

And if the Lord himſelf ouſte his Tenant of Lands which are holden of the Mannor by Charter in Fee, the Tenant who is ouſted ſhall have this Writ of *Droit cloſe* directed unto the Lord himſelf, if he will, &c. Or in this caſe he may have an Aſſiſe, or other Writ at the Common Law againſt the Lord for thoſe Lands. But it appeareth by a Rule in the Regiſter, that if the Demandant be defeated of Juſtice

in

in the Lord's Court, that then the Demandant may ſue a VVrit directed unto the Sheriff, commanding the Sheriff that he go unto the Court in Ancient demeſn, and that he take with him four diſcreet Knights in their proper perſons, to ſee that right be done unto the party Demandant in this Writ; and if the Sheriff refuſe ſo to do, he may have an *Alias* and *Pluries*, and Attachment againſt the Sheriff in the Common Pleas or King's Bench. But it ſeemeth that this Writ which ſhall be ſo ſued directed unto the Sheriff, that he ſee right done to the Demandant, is of little effect; for by virtue of this VVrit he cannot compel the Lord to do right unto the Demandant, as it ſeemeth: *tamen Quære*: for if he cannot cauſe the Lord to do right unto the Demandant in a Writ of *Droit cloſe*, then it ſhall be in vain to ſue ſuch Writ directed to the Sheriff, to go unto the Lord's Court, and to ſee that right be there done. And the Demandant may ſue ſuch Writ directed unto the Bailies, or unto the Lord himſelf, commanding them that they do him right, &c. and that they do not delay the matter, &c. And thereupon an *Alias*, a *Pluries*, and *Attachment*, if need be. [13.]

A And if a Plea be removed in the County, the Demandant may ſue ſuch Writ directed unto the Sheriff, that he proceed in the Plea, and to Judgment, and to do right; and upon that he ſhall have an *Alias*, a *Pluries*, and *Attachment* againſt the Sheriff, if he will not do accordingly.

B And note, that the Demandant in a Writ of *Droit cloſe* cannot remove the Plea out of the Lord's Court for no cauſe, &c. nor the Tenant cannot remove the Plea out of the Ancient demeſn, if not for cauſes which prove the Land to be Frank-fee, and not Ancient demeſn. And the form of the Writ of *Recordare* to remove the Plea out of Ancient demeſn is ſuch: 14 H. 6. 35. 6 H. 4. 1. 50 E. 3. 24. 1 H. 7. 30.

D *Rex Vic. Lincoln. ſalut'. Præcipimus tibi, quòd aſſumptis tecum quatuor diſcretis & legalibus Militibus de Com. ſuo, in propria perſona tua accedas ad Cur. B. de C. & in plena Curia illa record. ſar. facias Loquelam quæ eſt in eadem Cur. per parvum Breve noſtrum de Recto, inter &c. de uno meſuagio cum pertin. in I. & Record. illud habeas coram Juſtic. noſtris, &c. & partibus, &c. & habeas ibi nomina prædict. quatuor hominum, & hoc Breve, & aliud Breve, &c. Quia præd. A. in placitand. in Cur. præd. protulit Chartam Domini Henr', quondam Regis Angliæ, progenitoris proavi noſtri, per quam idem proavus noſter feoffavit W. patrem præd. A. (cujus Hæres ipſe eſt) de meſuagio præd', ut dicitur, per quod idem A. dicit ſe non debere nec poſſe ſine nobis reſpondere: Fiat executio iſtius Brevis, ſi cauſa ſit vera, & præd.*

præd. Abbat petat, et aliter non. There is another cauſe in the Regiſter thus: *Quia clamat tenere Tenementa prædicta ad Communem Legem*, &c. But then in the Common Pleas when the Record is removed, he ought there to ſhew ſome ſpecial matter to prove the Lands and Tenements to be Frank-fee, and not Ancient demeſn, otherwiſe the Plea ſhall be ſent back unto the Lord's Court: but to ſhew a Fine levied in the King's Court of the ſame Land, or a Recovery had in the King's Court in a *Præcipe quòd reddat*, &c. is a good cauſe to prove the Lands to be Frank-fee; and if he claim the Land by the Feoffment and the King's Charter, or by the Feoffment of Charter of the Lord of the Mannor; or if he claim to hold them of the King as of another Manner of Honour, &c. and not to hold them of the ſame Mannor; or if he ſay, that in an Aſſiſe brought before of the ſame Lands or Tenements at the Common Law againſt another Tenant, that the Tenant ſaid that they were Ancient demeſn, and that they were Frank-fee, &c. whereupon it was found by the Aſſiſe that they were Frank-free, &c. And another cauſe appeareth in the Regiſter, becauſe that there are not any Suitors in the Lord's Court of Ancient demeſn to do right, &c. But *Quære* if this be a ſufficient cauſe or not.

A Writ of Right Cloſe is brought, and pendant the Writ the Tenant accepts a Fine *Sur conuſances de droit come ceo que il ad, &c.* yet the Land remains Ancient demeſn as to that Action, becauſe he hath affirmed his Plaint before the Fine, and ſo was it holden 12 H.7. Rot. 103.

40 E.3.4. 50 E.3.24. 34 H.6.35. 6 H.4.1.

11 E.3. Cauſe de remover Plea 16. If the Cauſe aſſigned may be tried in Ancient demeſn, it ſhall not be removed.

Regiſter 11. Br. remove de Plea 35. vid. en 17 E. 3. Cauſe de remov. 1. becauſe there were but ſix Suitors, and one Plaint, and the other Def. therefore removed: ſo four not ſufficient.

If a Frank-Tenant, of Ancient demeſn, who holdeth his Tenements by Knights ſervice and in Fee, be ouſted and diſſeiſed of his Lands or Tenements, he ſhall ſue at the Common Law, and not in Ancient demeſn, for no Lands are Ancient demeſn but Lands holden in Socage.

26 H.8.4. for Lands in Gavelkind, ſee 14.b.

And a man ſhall have a Bill of *Freſh force* within forty days in the Lord's Court of Ancient demeſn for the Lands after the Diſſeiſin, and without ſuing any VVrit thereupon; as a man ſhall have of Lands in a City or Borough: and there in that caſe, if the Tenant hath any matter to prove the Lands to be Frank-fee, he ſhall have a *Recordare* to remove the Plea out of Ancient demeſn into the Common Pleas, &c.

26 H.8.4.

And although the Plea in Ancient demeſn be there without Writ, &c. if the Tenant remove the Plea out of Ancient demeſn

3 H.6.34.

demeſn by a *Recordare*, and for cauſe ſhewed in the VVrit, if the cauſe be not good, the Tenant in the Common Pleas ſhall not ſhew any new cauſe to retain the Plea in the Common Pleas: but if the cauſe in the VVrit be, *which he claims to hold at the Common Law*, then in the Common Pleas he may ſhew what cauſe he will to retain the Plea there; which cauſe ſhall prove the Tenements to be Frank-fee.

34 H.6.35. or 44 E.3. 10.

21 E.3.32. Br. auncient demeſn 18. or 34 H.6. 35.

G And in Ancient demeſn, if the Demandant and Tenant put themſelves upon the Grand Aſſiſe, or the Tenant vouch a Foreiner, or plead a forein Plea which cannot be tried in the Lordſhip there; then a *Superſedeas* ſhall be granted out of the Chancery, directed unto the Lord of Ancient demeſn, or his Bailies, if the VVrit were directable to the Bailies, that they ſhall ſurceaſe, &c. And the party Defendant ſhall ſue his VVrit of *Warranty* of *Charter* againſt the Vouchee, &c.

50 E.3.24. the Lord made a Leaſe for life, that is a good Cauſe. 1 H.7.30. per Tounſend.

H And if the Sheriff do remove the Record in Ancient demeſn by *Recordare* into the Common Pleas, and afterwards the Bailies in the Court of Ancient demeſn proceed in the Plea (notwithſtanding the removing of the Record) then the Tenant may ſue a *Certiorari* directed unto the Juſtices of the Common Pleas to certifie the Tenor of the Record into the Chancery; and of this Removement and upon the Certificate into the Chancery, the Tenant ſhall have an *Attachment* againſt the Bailies who proceeded in the Plea directed unto the Sheriff, for to arreſt them, returnable in the Common Pleas, to anſwer unto the King, and alſo unto the Tenant who ſued forth the *Recordare*. But in Ancient demeſn if the Tenant vouch a Foreiner to VVarranty, then the Tenant ought to ſue his VVrit of *Warrantia Chartæ* returnable in the Common Pleas againſt the Vouchee, and upon this VVrit ſued to purchaſe a *Superſedeas* directed unto the Bailies of Ancient demeſn, commanding them to ſurceaſe until the Plea in the *Warrantia Chartæ* be determined in the Common Pleas. And if the Bailies proceed after ſuch VVrit ſued forth and directed unto them, the Tenant who ſued the VVrit may have an *Attachment* of them directed unto the Sheriff, &c. that he do attach them to anſwer in the Common Pleas at a certain day, &c. as well unto the King, as unto the party, for the contempt, &c. But if the Plea of *Warrantia Chartæ* be diſcontinued in the Common Pleas, then the Deman-

12 H.7. Rot.103. it is holden, that if they proceed after the Record removed and award execution, that it is not void. 16 E.3.3. Proceſs 167. the party had *audita querela* againſt the Judges upon that Caſe: and 17 E.3. ibid. 186. it was holden that the Sheriff ſhall be puniſhed for his contempt.

[14.]

A

Demandant in the Writ of *Droit cloſe* may ſue a Writ out of the Chancery directed unto the Juſtices of the Common Pleas, to certifie the King in the Chancery if the Plea of *Warrantia Chartæ* be pendant or diſcontinued, or not, ſo that if it be diſcontinued, &c. or determined, he may ſend unto the Bailies of Ancient demeſn, that they proceed in the Plea.

v. 13 D. 29 E. 2. auncient demeſn 41.

And if the Tenant claim to hold the Lands of the Lord in Ancient demeſn by Knights Service, &c. the ſame is a good cauſe for to remove the Plea, becauſe that Lands which are holden of the Mannor, which ſhall be taken Ancient demeſn, ſhall not be holden of the Lord by other Services than Socage; for the Tenants in Ancient demeſn are called *Sokemani*, that is to ſay in Engliſh, Tenants of the Plough. B

And therefore if the Lord of a Mannor in Ancient demeſn, before the Statute of *Quia Emptores terrarum*, maketh a Feoffment in Fee of the parcel of the Lands of the Mannor, to hold of him by Knights Service, ſuch Tenant ſhall not have a *Monſtraverunt*, if he be diſtrained for other Services than of right he ought to do, becauſe his Lands are not Ancient demeſn of the King, and yet they are holden of the Mannor which is Ancient demeſn: But it is intended of ſuch Tenures which ſhall do the Services of the Plough, *viz.* to plough and till the Lord's lands, to mow the Lord's Meadows, or other ſuch like Services as are for the maintaining of the Kings ſuſtenance or victuals and his Subjects; and for ſuch Services ſuch Tenants have ſuch liberties and priviledges in the Law, that they may the more quietly uſe their Husbandry, and do their Services. C

30 E. 3. 6. per Sidenham, contr. if he refer but Socage Tenure.

Writ de Monſtraverunt.

THe VVrit of *Monſtraverunt* lieth for the Tenants of Ancient demeſn who hold by free Charter, and not for thoſe Tenants who hold by Copy of Court-Roll, or by the Rod according to the Cuſtom of the Mannor, at the will of the Lord. And theſe Tenants ought to be Tenants which hold of a Mannor which was in the hands of S. *Edward* the King and Confeſſor, or in the hands of King *William* the Conqueror; which Mannors are called Ancient demeſn of the King, or the Ancient demeſn of the Crown of *England*. And to theſe Tenants (who hold of ſuch Mannors) there are many and divers liberties, gifts and grants by the Law: D

49 E. 3. 22.

E

G

I

25,

as, to be quit of Toll, and Paſſage, and ſuch impoſitions which men ſhall demand of them for the goods and Chattels ſold or bought by them in Fairs or Markets; and to be quit of Taxes and Tallages granted by Parliament; if not, that the King lay a Tax upon Ancient demeſn, as he may for ſome great cauſe, whenſoever it ſeemeth good unto him. And alſo Tenants in Ancient demeſn ought to be acquitted of the payment of the expences of the Knights which came to Parliaments, and alſo they ought not to be impannelled or put upon Juries or Enqueſts in the Country out of their Mannor or Seignory of Ancient demeſn, if they have not other lands at the Common Law for which they ought to be charged, &c. And if ſuch Tenants, or any of them who hold of the Mannor of Ancient demeſn, be diſtrained to do unto their Lords other Services or Cuſtoms than they, or their Auncеſtors have uſed to do, then they may ſue this VVrit of *Monſtraverunt* directed unto the Lord, commanding him that he do not diſtrain them to do other Services or Cuſtoms than they have uſed to do: Or they may have this VVrit of *Monſtraverunt* directed unto the Sheriff; and that is where the VVrit of *Monſtraverunt* is firſt ſent unto the Lord, that he do not diſtrain his Tenants, &c. Or they, upon this VVrit ſued and directed unto the Lord, may have and ſue another VVrit directed unto the Sheriff, rehearſing, That where he hath ſent his VVrit unto the Lord of Ancient demeſn, that he ſhould not diſtrain his Tenants, &c. and if the Lord will not do it, and ſuffer the Tenants to be in peace, that then the Sheriff ſhall do it, and cauſe the Lord to ſuffer the Tenants to be in peace, and that he do not diſtrain them for other Services than of Right they ought to do. And the form of the VVrit directed to the Lord is ſuch:

19 H. 6. 66. per Newton, Tenants in Ancient demeſn ſhall be quit of Toll of things which they ſell which are ariſing of their Lands, and ſo of all things which they buy, which are for the manurance of the Land; but *Quare* if they ſhall be quit for all things bought and ſold.

Vide 161, they ſhall be quit of Suit to Leets and Hundreds. Vid. 22. El. Dyer 377. Regiſter 181. Br. ancient demeſn 49. 7 H. 6. 35. Martin. ac.

40 E. 3. 44. *Quare* if they ſhall have this Writ without being diſtrained.

G *Rex Abbati de C. ſalutem. Monſtraverunt nobis homines tui de Manerio de L. quod eſt de antiquo Dominico Coronæ* Angliæ, *ut dicitur, quòd tu exigis ab eis alias Conſuetud. & alia Servitia, quàm facere debent, & anteceſſores ſui Tenentes de eodem Manerio facere conſueverunt temporibus quibus Manerium illud fuit in manibus progenitorum noſtrorum quond. Reg.* Ang. *vel in manu noſtra. Et ideo tibi præcipimus, quòd à præf. hominibus non exigas ſeu exigi permittas, alias Conſuet. & alia Servitia*

40 E. 3. theſe words prove that they may have this Writ before Diſtreſs.

[15.]

quàm

quàm facere debent, et anteceſſores ſui prædict. facere conſueverunt temporibus prædict'. Et niſi ad mandatum noſtrum hoc fecerit, A. Vicecom. noſtr. Linc', id fieri præcipimus. Teſte, &c. A
And upon this Writ they may ſue another VVrit of *Monſtraverunt* directed unto the Sheriff, which ſhall be in this form: *Rex Vic.* Lincoln' &c. *Monſtraverunt nobis homines Abbatis de Manerio de* L. *quod eſt de antiquo Dominico Coronæ Angl', ut dicitur quòd idem Abbas exigit ab eis alias Conſuetud. et alia Servitia quàm facere debent,* &c. [uſque ibi, *in manu noſtra:*] *per quod eidem Abbati Præcipimus, quòd à præf. hominibus non exigeret, vel exigi permitteret, aliàs Conſuetud. vel alia Servitia quàm facere debent, et anteceſſ. ſui præd. facere conſueverunt tempor. prædict'. Et ideo tibi præcipimus, quòd niſi idem Abbas ad mandatum noſtrum hoc fecerit, tu id fieri fac', nè amplius indè clamorem audiamus pro defectu Juſtic',* &c.

And it ſeemeth that by this VVrit directed unto the Sheriff, the Sheriff may charge the Lord, that he do not demand nor diſtrain them for other Services than they ought to do, and that the Sheriff may make reſiſtance and reſcous unto the Lord if he diſtrain the Tenants for other Services, &c. and that the Sheriff may take the power of the County to reſiſt the Lord in ſuch caſe, or the Sheriff may command the Neighbours who dwell next to the Mannor that they reſiſt and do reſcous unto the Lord if he will diſtrain his Tenants &c. And it ſeems they may juſtifie the ſame by the commandment of the Sheriff, if he have ſuch a VVrit ſent unto him &c. And after the VVrit directed unto the Sheriff, if the Lord diſtrain, the Tenants may ſue an *Attachment* againſt him, returnable in the Common Pleas, or the King's Bench, to anſwer to them for this Contempt; and if it be found for them, they ſhall recover their damages. B C

Com. 129. 1H. 6. 26. D

And note that the VVrit of *Monſtraverunt* ſhall be ſued by many of the Tenants without naming any of them by their proper names, but generally, *Monſtraverunt nobis homines*, &c. But in the *Attachment* againſt the Lord by the Tenants, the Tenants ought to be named by their proper names, thus;

Rex &c. *Si* A. *de* B. C. *de* F. *et homines Abb.* M. *de Manerio de* L. *quod eſt de antiquo Dominico Coronæ* Angliæ, *ut dicitur, fecerint* &c. *tunc. pone* &c. *prædict. Abbat'. quòd ſit coram nobis* &c. *ubicunque,* &c. *oſtenſurus quare exigit à præfat. hominibus alias Conſuetud. et alia Servitia quàm facere debent, et anteceſſ. ſui Tenentes de eodem Manerio, facere conſuever. temporibus quibus Manerium illud fuit in manibus progenitor. noſtror.*

noſtror. quond. Reg. Angliæ, vel in manu noſtra, ſi caſus ſic fuerit, contra prohibitionem noſtram. Et habeatis ibi nomina Pleg', & hoc Breve. Teſte, &c.

E And there is another Writ of *Monſtraverunt*; where the Tenants of any Hamlet, which Hamlet is parcel of a Manor of Ancient demeſn, are diſtrained by the Lord, they ſhall have ſuch Writ:

Rex, &c. Monſtraver. nobis homines tui de Hamleto de I. *quod eſt membrum Manerii de* B. *quod eſt de antiquo Dominico Coron. Ang'. ut dicitur, &c.*

F And it ſeems that in the Writ of *Attachment* he ought or may name all thoſe Tenants by their proper names which are diſtrained after the Prohibition delivered unto the Lord; and it behoveth not to name other Tenants by their G proper names, but in the generality, *Et homines, &c.* And if one of thoſe who is named by his proper name will not ſue, &c. he ſhall be ſevered, &c. And he that is *Nonſuit* ſhall not grieve his Companions. And it ſeemeth that every one ſhall recover his damages ſeverally, becauſe they are ſeverally diſtrained, and one may be more damnified than another, &c.

H And one Tenant may ſue the Writ of *Attachment* in his own name by his proper name, and in the name of the other Tenants by general words, &c. *Et homines, &c.*

I And if the Tenants do ſue an *Attachment* againſt the Lord, becauſe he diſtrained them after the Writ of *Monſtraverunt* delivered unto him, and pending the Writ of *Attachment* the Lord diſtrain them again by their goods; then the Tenants ſhall have a ſpecial Writ of *Attachment* againſt the Lord, rehearſing the matter; and in the ſame Writ the Sheriff ſhall be commanded to re-deliver unto the Tenants their goods, if the Lord have taken them, &c. And this Writ ſhall be ſued only in the name of thoſe Tenants which are again diſtrained pendant the Suit, and not in the name of them all, as the other Writ is ſued: and the Writ ſhall be ſuch.

Rex Vic', &c. Si A. *&* B. *homines Abb. de* C. *de Manerio de* N. *quod eſt de antiquo Dominico, &c. fec', &c. tunc pone, &c. præd. Abbatem, &c. oſtenſur. quare cùm nuper ad proſecuticn. diſt. hominum nobis ſuggerent. præfat. Abbat. exegiſſe alias Conſuetud. & alia Servitia quàm facere debent, & anteceſſ. ſui Tenent. de eodem Man', &c.* (uſque ibi, *Reg. Angliæ*) *tibi præciperimus, quod pones per Vad. & ſal' vos Pleg. prædict. Abbatem, quod eſſet coram nobis à die Paſchæ proxim. præterito in quindecim dies, ubicunque, &c. ad reſpondend. præfat. homini-* [16]

hus de præmiſſ. idem Abbas (pendent coram nobis placito Attachiament. præd.) prædict. homines eò gravius diſtrinxit, & omnia bona, catalla ac averia ſua in eodem Manerio inventa eis abſtulit, & ea eis adhuc detinet, quò minus ipſi placit. Attach. præd. pro paupertate proſequi poſſint, in noſtri ac mandatorum noſtrorum prædict. contemptum, & præd. hominum diſpendium non modicum, & proſecutionis juris ſui retardat', & ſtatûs ſui depreſſionem manifeſtam. Et averia, bona & catalla præd. eiſdem hominibus per ſufficientem ſecuritatem interim deliberare facias. Et habeas ibi nomina Pleg', & hoc Breve. Teſte, &c.

And in this VVrit of *Monſtraverunt*, the Plaintiff in the VVrit of Attachment may count ſeverally, and then they ſhall recover ſeveral damages. But they may count together in one Count, and declare how they were ſeverally diſtrained, &c. and it is not neceſſary to alledge in the Count the day, or the place where the Lord diſtrained them. And the form of the Count or Declaration is ſuch : A

39 E. 3. 6. ret. Monſtr. 2. 49. E. 3. per Belknap.

A. B. *ſumm. fuit ad reſpondendum* C. D. & F. *& hominibus præd.* A. *de Manerio de* S. *quod eſt de antiquo Dominico Coronæ* Angl', &c. *de placito, Quare exigit ab eis alias Conſuetud. & alia Servitia quàm facere debent, et cor. anteceſſores, Tenentes de eodem Manerio, facere conſueverunt temporibus quibus Manerium illud fuit in manibus progenitorum,* &c. *Regum* Angl', *ad grave damnum ipſorum* C. D. & F, &c. *Et unde iidem homines per* T. S. *Attorn. ſuum queruntur, quòd cùm eorum anteceſſ. Tenent. de eodem Manerio tempore quo Manerium illud fuit in manibus Domini* Henrici *quondam Regis* Angl' *proavi eidem avo Domini Regis nunc, tenuiſſent Tenement ſua per certa Servic', ſcil. quilibet eorum tenebat unam virgat. terr. de eodem Maner', &c. per fidelitatem et ſervic. quinque ſolid', et faciend. Sect. ad Cur. dicti Maner. de S. bis in anno, viz. ad Feſtum ſancti* Mich. *et ad Feſtum* Paſchæ; *et ſi contigiſſet Breve de Recto fuiſſe in eadem Cur. placitand', faciend. Sect. in eadem Cur. de tribus ſeptimanis in tres ſeptim', &c. quamdiu Breve illud pendens fuit in eadem Cur', et quando Dominus Rex burgos, ſuos et Dominica ſua talliaverit, &c. pro omnibus Servitiis; et qui plus Terræ tenuiſſent de prædict. Maner', plus redditûs redderent, &c. Et iidem Tenentes hujuſmodi ſtatum continuâſſent à tempore ejuſd.* Hen. *proavi, &c. de Rege in Regem progenitorum, &c. uſque ad tempus præd. Domini Regis* Edwardi *avi, &c. Quòd prædictus* A. *Dominus Manerii prædicti, diſtrinxit ipſos* C. D. & F. *et alios homines, &c. ad Sectam faciend. ad præfatam Curiam de tribus ſeptim. in tres ſeptimanas per totum annum, &c. et talliando ipſos alto et baſſo pro voluntate ſua, exigend. ab eis pro filiis et filiabus ſuis maritand', & alia Servitia et Conſuetud. Villain', quæ facere non debent,*

debent, nec ſolebant, unde hic, quòd deteriorati ſunt et damnum habent ad valentiam C.l.at indè produc. Sectam, &c.

B And whether they ſhall recover ſeverally damages upon that joynt Count, it is a doubt, yet it ſeemeth reaſonable that they may, becauſe it is ſeveral in its nature, becauſe they count upon their ſeveral Tenures, &c. and how that he hath diſtrained them ſeverally; by which it ſeems but reaſonable that the Jury do enquire of the damages ſeverally, if they paſs for the Demandants, or that ſeveral Writs of enquiry of damages be awarded in that caſe, if the matter be adjudged with the Demandants. But it ſeems no Tenant ſhall recover damages, but thoſe who are ſpecially named in the VVrit of Attachment ſued upon the *Monſtraverunt*, and not the other men.

C And note, that the Lord of Ancient demeſn ſhall not be put to anſwer to the VVrit of Attachment ſued againſt him upon the *Monſtraverunt*, before the Court be certified by the Treaſurer and Chamberlains of the Exchequer, whether the Mannor be Ancient demeſn: And therefore it behoveth the Plaintiffs in the *Monſtraverunt* to ſue forth a ſpecial VVrit unto the Treaſurer and Chamberlains of the Exchequer to certifie the ſame: And the VVrit is ſuch.

Rex Theſaur. et Camerariis ſuis ſalutem. Quia quibuſdam certis de cauſis certiorari volumus, utrùm Manerium de Lin Com. C. ſit de antiquo Dominico Coronæ Angliæ *necne, vobis mandamus, quòd ſcrutato Libro noſtro de* Domeſday, *de eo quod indè inveneritis nos, ſub ſigillo noſtro Scaccarii noſtri, diſtinctè et apertè ſine dilatione redd. certiores, remittentes nobis hoc Breve. Teſte*, &c.

D And note that the Book which is called *Doomſday*-Book was made in the time of S. *Edward*, and all the lands which were in the Seiſin and in the hands of the ſaid S. *Edward* at the time the ſaid Book was made are Ancient demeſn, and the lands which were in other hands and are not named in 2 R 2. 1.
E the ſaid Book are Frank-free: and thoſe Tenants which held 39 E. 3 6.
in baſe Tenure, as by Copy of Court-Roll, or by the Rod, cannot ſue nor maintain this VVrit againſt the Lord: And the death of one Tenant, nor his Non ſuit, ſhall not abate
F the VVrit. And if the Frank-Tenants and the Tenants by baſe Tenure joyn in a *Monſtraverunt*, the VVrit ſhall not abate, but for the Tenants by baſe Tenure.

Writ de Warrantia Diei.

[17.] WRit of *Warrantia Diei* lieth in caſe where a man hath A
Day in any Action brought againſt him to appear in proper perſon, and the King at or before the day ſend him in or about his Service, ſo as he cannot appear in Court at the day; then may he ſue forth this VVrit directed to the Juſtices, reciting the whole matter, commanding them that they do not record his Default for that day for the cauſe before mentioned: And it is not material whether the cauſe be true or not, when the King doth certifie that the party is in his ſervice. For it ſeemeth by the words of the VVrit, that the King by his Prerogative may warrant this Default for a day. And ſo it ſeemeth, that if the Tenant in a *Præcipe quòd reddat* at the *Grand Cape* or the *Petit Cape* returned make Default, that before Judgment upon this Default the King may ſend ſuch a VVrit unto the Juſtices, rehearſing that the party is in his Service, and commanding them that his Default do not prejudice him: and it ſtandeth with reaſon that the King may ſo do, becauſe that every one is bounden to ſerve the King in his buſineſs. But what proceſs ſhall the B
Court award if the Tenant will not appear at the day of the Default recorded, nor after when the VVrit of *Warrantia Diei* comes unto the *Juſtices*? it ſeemeth a new Summons ſhall iſſue out of the Common Pleas to ſummon the Tenant anew, becauſe his Default at his return is excuſed by the VVrit of *Warrantia Diei*. But if the VVrit *Warrantia Diei* do not excuſe the default at the *Grand Cape*, then it ſeems a new *Grand Cape* ſhall go forth upon the firſt Default returned at the Summons of the *Præcipe quòd reddat*. *Quære* o C
that. And the King may grant ſuch VVrits to ſave two Defaults at two ſeveral daies, &c. *Quære* of theſe matters, becauſe they are out of uſe at this day. And the form of the VVrit is ſuch:

Rex Juſticiar. ſuis de Banco ſalutem. Sciatis quòd A *fuit in* D
ſervitio noſtro per præceptum noſtrum die Lunæ in Craſtin. xv. Paſch. proxim. præteriti, ità quòd eo die intereſſe non potuit. Loquel. quæ eſt coram vobis per Brevè noſtrum inter B. petent', & præd. A. Tenentem de uno meſuagio cum pertinen. in N. unde idem A.C. verſus prædict. B. indè vocavit ad Warr', ut dicit: Et ideo vobis mandamus, quòd præd. A. propter abſentiam ſuam ad illum diem, non ponatur in defectu, nec in aliquo ſit perdens, quia diem illum quoad hoc warrantizabim. Teſte, &c.

The form of the VVrit to ſue two Defaults is: *Rex*, &c. ut

ſuprà

Suprà. Sciatis quòd A. *fuit in ſervitio noſtro per præceptum noſtrum die Jovis in Octabis* S. *Hil'*, *et die Lunæ in Craſtin. Animarum proxim. præteritis, ità quòd diebus ill. inter eſſe non potuit Loquel. quæ eſt coram vobis per Breve noſtrum inter* &c. *Et ideo vobis mandamus, quòd præd.* A. *propter abſentiam ſuam ad diem illos non ponatur in defectu, quia dies illos quoad hoc ei warrantizabimus. Teſte* &c.

E And theſe two VVrits are not granted but by the King himſelf by the Rule of the Regiſter; and the King may grant ſuch VVrits unto the Maior and Sheriffs of *London*, or unto the Biſhop of *Durham* in the County Palatine, or unto the Juſtices of Aſſiſe, or in the Eyre, or unto the Sheriff: and theſe VVrits may be granted as well for the Demandant and Plaintiff as for the Tenant; and then the VVrit is ſuch:

F *Rex* &c. *Sciatis quòd* A. *fuit in ſervic. noſtro die Lunæ in Craſtino Quinden. Paſch. proxim. præterit'*, *ità* &c. *inter ipſum* A. *Petentem, et* B. *Tenentem* &c. And there it ſhall be ſaid *in Craſt. Quind. Paſc.* becauſe that the Pleas cannot be holden *Quind. Paſc.* becauſe that is Sunday, which is the Sabbath-day. And the King may grant this VVrit by Teſtimony of his Steward thus:

Rex &c. *Quia* A. *fuit coram Sen. et Mareſchallo noſtro die Lun. in Quindena ſancti* Johannis Baptiſt' *proxim præterit. in diverſ. inquiſit'*, *quæ coram iiſd. Seneſc. et Mareſc. prædict. die ſum. fuer. apud* E. *ſicut idem Sen. noſter coram nobis teſtificatus eſt: Vobis mandamus, quòd præd.* A. *pro eo quòd non venit coram vobis in aliis inquiſ. quæ coram vobis eod. die ſummon' fuer'*, *non amercietis, nec exitus, ſi in quos coram vobis ed occaſione intiderit, perdere permittat' Teſte* &c.

G And it ſeems by this VVrit, that the Juſtices ought to make a ſpecial Entry thereof, and to ſave the iſſue of this Jurour, and alſo to make a ſpecial Eſtreat of this matter, and to levy no iſſues upon theſe Jurors for whom ſuch VVrits come unto the Juſtices.

H And if a man be eſſoigned of the K. ſervice in any Action, &c. whereas in truth he is not the Kings ſervice, then the Plaintiff or Demandant may ſue forth a ſpecial VVrit out of the Chancery directed unto the Juſtices, rehearſing that he is not in the King's ſervice, commanding them to proceed. But by the Statute of *Glouceſter*, if he do not bring his VVarrant at the day given, he ſhall loſe xx s. for the journey; and ſhall be in the King's mercy, and the Eſſoin diſſolved. And if the Plaintiff purchaſe ſuch VVrit directed to the Juſtices, that he is not in the King's ſervice, then the Eſſoin ſhall not be adjourned, but ſhall be preſently quaſhed, and he ſhall

not have day by adjornment to bring in his VVarrant to warrant the Essoin.

Writ of False Judgment.

[18.] 22 Ass. 64. Br. Error 120. If the Free-holder be recorded by Plea, where it ought to be by Writ, it is Errour, and not void, *& coram non judice*: But where Judgment is given of Land, Contract, or Covenant, which is out of their Jurisdiction, it is void, *& coram non judice.*

WRit of False Judgment lieth where False Judgment is given in the County, or in the Hundred, or in other Court-Baron which is not a Court of Record, in a Plea Real or Personal, as if in a VVrit of Right Patent, or in other Personal Plea; there the party Plaintiff or Defendant which is grieved shall have this VVrit, and the VVrit shall issue first out of the Chancery: And if the False Judgment be given in the Sheriffs County-Court, then the VVrit shall be directed unto the Sheriff himself, and shall be such: I A

Henric', &c. *Vic.* Linc. *salut. Si* A. *fecerit, &c. tunc in pleno Com. tuo record. fac. Loquelam quæ est in eod. Com. per Breve nostr. de Recto inter* A. *Petent. et* B. *Tenent', de uno messuag. et cent. acr. terræ cum pertin. in* C. *unde idem* A *queritur falsum sibi factum fuisse judic. in eod. Com'; et Record. illud habeas coram Justic. nostr. apud* VVestm. *tali die sub sigillo tuo, et per quatuor legal. Milit. ejusdem Com. ex illis qui Record. illi interfuerunt: et summ. per bonos Sum. prædict.* B. *quod tunc sit ibi, auditurus Record. illud. Et habeas ibi Summ', nomina quatuor Militum, et hoc Breve.* B

Vide 4 & 5 Ma. Dyer 164. the Writ was challenged because it was *sub sigillo tuo & sigillis quatuor legalium hominum ejusdem Curiæ*, and good, *in semble.*

And if the Tenant hath aliened the Land after Judgment given against the Demandant, then the Summons shall be made in the Writ against him who is Tenant of the Land, and against him who was Tenant at the time of the Judgment given, by these words, *viz. et summ. per bonos Summ. præd.* B. *et* C. *qui messuag. et terram illam nunc tenent, quod tunc sint ibi, audituri*, &c. C

And if the False Judgment be given in another Court-Baron than in the Sheriffs Court, then the Writ of False Judgment is called a Writ of *Accedas ad Curiam*, and shall be directed unto the Sheriff; and the Writ is such: D

Rex Vic. Linc. *salutem. Si A. fecerit te securum de clam. suo prosequend', tunc assumptis tecum quatuor discret. et legalibus, Militibus de Com. tuo, in propria person. tua acced. ad Curiam* B. *de* C. *et in plena Curia illa record. fac. Loquelam quæ fuit in eadem Curia per Breve nostrum de Recto inter* A. *Petent. et* B. *Tenent'*

nent', de uno meſuag. &c. unde A. queritur falſum ſibi factum fuiſſe judicium in cod. Curia; & Record', &c. ſub ſigillo tuo, & per quatuor legales homines ejuſdem Curiæ ex illis qui Recordo illi interfuerunt; & ſumm', &c. et habeas ibi nomina prædict. quatuor hominum, & hoc Breve.

E And in this Writ of *Accedas ad Curiam* he ſhall take with him four men, but it needeth not that they be Knights; but ſo ſhall it not be in the other Writ of *Recordari facias Loquelam*, which is in the County. But both VVrits ſhall be returned under the Sheriffs Seal, and the Seals of four of the Sutors of the ſame Court. And in the Writ of Falſe Judgment which is *Accedas ad Curiam*, it is a good Return for the Sheriff for to ſay, that after the receipt of the VVrit, and before the Return thereof, no Court was holden; and alſo that he required the Lord to hold his Court, and he would not, ſo as he could not execute the ſame. And thereupon the Juſtices ſhall award a *Diſtringas* directed unto the Sheriff, to diſtrain the Lord to hold his Court; and *Sicut alias*, &c.

F In a Falſe Judgment againſt an Abbot the Plaintiff was Non-ſuit, and the Abbot had a *Scire facias* againſt the Plaintiff, to ſhew why he ſhould not have Execution, and to have the Judgment executed returnable at 15 *Paſc.* at which day the Plaintiff appeared, and aſſigned his Errors, and tendred Sureties to ſue with effect, and prayed a *Scire facias* againſt the Abbot *to hear Errors*. And the Opinion of the Court was, that he might aſſign the Errors againſt the Abbot, without ſuing any *Scire facias* againſt him, becauſe they had day by the Roll.

G If the Writ of Falſe Judgment abate for default in the Writ, then the Plaintiff ſhall not have a *Scire facias ad audiend. Errores* upon the Record certified, becauſe it cometh without an Original, when the Original abateth. But if the Plaintiff die, it ſeems that if the Falſe Judgment be given in the baſe Court upon a Writ of *Droit Patent*, that then his Heir ſhall have a *Scire facias ad audiend. Errores* againſt him who recovereth upon that Record which is removed into the Common Pleas. And if the Plaintiff in the Writ of Falſe Judgment be Non-ſuit, whether the other party ſhall ſue Execution upon this Record ſo removed againſt the Plaintiff, without ſuing forth a *Scire facias*, is a queſtion. But *Hil.* 23. *H.* 6. the opinion was, that he ſhall have Execution without ſuing forth a *Scire facias*.

H And Tenant at will according to the cuſtom of the Manor, which is Tenant by Copy of Court-Roll, ſhall not have a Writ of Falſe Judgment upon a Judgment given againſt him. 14 H. 4. 19. 7 E. 4. 23.

him: But where False Judgment is given upon a VVrit of *Justicies* directed unto the Sheriff, the party grieved shall have a *Faux Judgment*, and not a VVrit of Error, although the Judgment be of Debt, or Trespass over the sum of 40 l.

34 H.6.48. contrary, if the *Justices* be removed in the King's Bench by a *Pone*.

And a man shall not have a VVrit of False Judgment but in the Court where there are Suitors; for if there be no Suitors, there the Record cannot be certified by them. And upon False Judgment given in Court before Bailies or others who hold Plea by prescription, in every sum in Debt by Bill before them, he shall not have a *Faux Judgment*, but a VVrit of Error thereupon. *Quod vide M.4.E.4.* in Title *Trespass*.

2 H.4.4. 21 E.3.45. 45 E.3.1. &c. therefore it seemeth Error lieth in a Court of Pipowder. Vid. 13.E.4. 18. 6 E.4.43. 7 E.4.23.

In False Judgment upon a VVrit of Right Patent or a VVrit of *Droit close* the Plaintiff shall not assign Errors before the Records certified, as well the Original as the residue of the Record. And the VVrit of False Judgment lieth against a stranger to the Judgment, if he be Tenant of the Land, without naming him who was Tenant and party to the Judgment. Otherwise it is of a Writ of Error, for there he ought to name him who was party to the Judgment, be he Tenant or not.

[19.] 21 H.4. 23. contr. and 21 H.6.34. the party had a *Scire fac.* to have Execution out of the Common Pleas.

And where the Tenant loseth his Land by False Judgment in a Writ of Right in a Court-Baron, he shall not have a Writ of False Judgment before that the Demandant hath entred upon him, &c. *Quod vid. M.13.E.3.*

And where the Defendant in *Faux Judgment* after appearance by him maketh Default, a Grand distress shall issue out against him. And if he again make default, or cometh and will not save his Default, the Plaintiff in the Writ of False Judgment shall have Judgment to recover Seisin of the Land against him: *quod vide M.* 13.E.2. And the Writ of False Judgment given in Ancient demesn is such:

Rex Vic. salut'. Si A. fecerit, &c. accedas ad Cur. B, &c. & *recordari fac. Loquelam quæ est in eadem Cur. per parvum Breve nostrum de Recto inter A. Petentem, &c. & habeas ibi nomina prædict. quatuor hominum, hoc Breve, & aliud Breve*, &c.

And in a Writ of *Droit close*, if the VVrit of the Demandant be abated, whereupon he bringeth his VVrit of False Judgment in the Common Pleas, and there the Judgment is reversed, and the Writ awarded good; then he shall hold Plea in the Common Pleas, and a Judicial VVrit shall issue from the Common Pleas in nature of Protestation made in the first Writ; and if the Protestation were in the nature of Assise of *Mortdauncestor*, the Justices shall direct a VVrit unto the Sheriff to summon the Jurors to come out of Ancient

cient demeſn thither, and all the matter ſhall be tried and determined in the Common Pleas: and although the Judgment be given of the Land in the Common Pleas, yet the Land ſhall be Ancient demeſn. *Quod vide M.* 3. *E.* 3. in Title of *Faux Judgment.*

E And upon the VVrit of *Faux Judgment* which is an *Accedas ad Curiam*, if the Sheriff return that the VVrit *adeo tardè venit, quòd Executionem ejuſdem facere non potuit*; then he ſhall have a *Sicut alias* directed unto the ſame Sheriff: and if he return not that at the day, then he ſhall have a *Pluries* to the ſame Sheriff. And he may have theſe Writs of *Alias* and *Pluries* out of the Common Pleas where the firſt Writ was returned *tardè*, if he will, or he may have them out of the Chancery, &c. See for this matter in the Book of *Entries, fol.* 114, & 115. And upon the *Accedas ad Curiam*, if the Sheriff return, that he will go unto the ſaid Court, &c and there pray the Lord to hold his Court, that he may do Execution of the VVrit, and that the Lord refuſeth to hold his Court, &c. by reaſon whereof he cannot do Execution of the VVrit; then a *Diſtringas* ſhall iſſue out of the Common Pleas directed to the Sheriff, to diſtrain the Lord, ſo that he diſtrain him to hold his Court at a certain day appointed by the Sheriff; *Et quòd Vic', aſſumpt. ſecum quatuor diſcretis Militibus, &c. de Comitat', &c. accedat ad Curiam, &c. & Scire fac. hic in xv. Paſchæ, &c. & Record. ibidem tunc habeat, &c. & quòd ſumm. præd. Inquiſ. ſit ibi, auditurus Record. illud, &c. Quod vide Lib. Intrac' fol.* 117.

F There is another VVrit of *Faux Judgment*; when there is a Plaint in the County of debt or Treſpaſs without any Writ, than the Writ of *Faux Judgment* in the County ſhall be thus: *Recordar. fac. Loquelam quæ fuit in eadem Curia ſine Brevi noſtro, inter, &c. de quadam tranſgr', &c. unde idem A. querit. falſum ſibi fact. fuiſſe judic', &c.* And where *Faux Judgment* is given in another Court than the County, upon a Plaint, or upon a Writ, then the Writ ſhall be thus:

Rex Vic' ſalut'. Si A. fecerit, &c. tunc accedas ad Hundr. A. de B. vel ad Curiam A. de C. & in pleno Hund. vel Curia recordari fac. Loquelam quæ eſt in eodem Hund. vel Curia per Breve noſtrum, vel ſine Brevi noſtro, de eo quòd idem A. teneat præfat. B. conventionem. inter eos factam de uno meſuagio cum pertin. in F. unde queritur, &c.

G And if a Baron and Feme be uſed in a Court-Baron by a Writ of Right, and the Feme is received for the Default of the Husband, and plead there and falſe Judgment is given againſt him, ſhe and the Husband may have a Writ of Falſe Judgment, as appeareth by the Regiſter. And

And there is another Writ there, where the Husband and Wife pray to be received in a Court Baron in a Writ of Right upon the default of Tenant for term of life, and were not received; and for False Judgment given against the Tenant for term of life they shall have a Writ of False Judgment, &c.

There is another Writ of *Faux Judgment* in the Register for him in the Reversion, who prayeth to be received in a Court-Baron in a Writ of Right upon the Default of two Tenants for life, where he was received for the Reversion of one of the Tenants, and the Receipt was counterpleaded for the Reversion of the other Tenant, and Judgment given, &c. And there it appeareth, that one Tenant was Tenant of certain parcel of the Land, and the other Tenant was Tenant of the other parcel of the Land.

There is another Writ of *Faux Judgment* for him that I hath Judgment given against him in the Court of a Lord, who hath power to hold Pleas before his Bailies by the King's Charter: but it seemeth that in that case he shall have a VVrit of *Error*, and not a VVrit of *Faux Judgment*.

There is another VVrit of *Faux Judgment* directed unto K the Sheriff, *viz. Accedas ad Curiam: Ad Curiam nostram de* Winchester, *& in plena Curia illa record. fac. Loquelam quæ fuit in eadem Curia sine Brevi nostro, secundum Consuetudinem Civitatis prædict', inter* VV. *Petentem, & D. Tenentem, de uno messuagio in* VVinch. *prædict', unde idem* VV. &c. *queritur falsum sibi factum fuisse judic'*, &c. But upon Assise of *Fresh* L *force* a VVrit of False Judgment doth not lie, but a VVrit of [20] Error. And if the VVrit of False Judgment be returned before the Justices of the Common Pleas, and the Defendant comes and saith and averreth that the Record is otherwise than it is certified, the Averment shall be received, 34 H.6.42. and that issue shall be tried by the Country, or by those who were present in Court when the Record was made, and by others of the Country; and if they come not, then the Enquest shall be by the Country, as appeareth by the Stat. *de Anno* 1 *E.3 cap.5. Rastal, Faux Judgment* 2.

Writ de Executione Judicij.

WRit *de Executione Judicij* lieth where Judgment is given A in the Court of any Lord upon a VVrit of Right Patent, or upon a Plea of Debt, or Trespass, in the same Court, or in the Hundred, County, Court-Baron, or in any other Court

Court of Record, and if the Sheriff or the Baily will not do Execution of the Judgment, then the party ſhall have this Writ directed unto the Sheriff or the Baily, in which Court the Execution ought to be; and if they will not do Execution, he ſhall have an *Alias* and a *Pluries*, with this clauſe in the Writ of *Pluries*, *vel cauſam nobis ſignifices quare*, &c. And if they do not Execution upon this VVrit, or return not ſome reaſonable cauſe wherefore they delay the Execution, the party ſhall have an Attachment againſt him who ought to have done the Execution returnable into the King's Bench, or into the Common Pleas. And if
B the Plea be in the Lords Court-Baron, then the Writ of Execution ſhall be directed unto the Baily of the Court. But if the Plea and the Judgment be given in the Sheriffs Court, as in the County-Court, then the Writ ſhall be directed unto the Sheriff himſelf to do Execution, and the *Alias* and *Pluries* ſhall be to the ſame Sheriff; and if they will not do Execution of the Judgment, then an Attachment againſt the Sheriff ſhall be directed unto the Coroners, returnable as aboveſaid, to anſwer, &c. And ſo if the VVrit *de Executione Judicij* be directed to the Bailies of any Court of any Lord, or unto the Bailies of a Hundred, to do Execution, and at the *Alias* and *Pluries* they will do nothing, the Attachment ſhall be to the Sheriffs againſt the Bailies, returnable as aforeſaid, to anſwer, &c. And if the Judgment be in a Court of Record, then it ſeemeth that the VVrit *de Executione Judicij* ſhall be directed unto the Juſtices of the ſame Court where the Judgment was given, to do Execution, and not unto the Officer of the Court. For if the Officer of the Court will not execute the VVrits directed unto him, nor return them as he ought, the Judges of the Court may amerce him. The form of the Writ is:

C Henr', &c. Lancaſtr' *ſalut'. Præcip. tibi, quòd Execution. judicii nuper reddit. in Com. tuo de Loquela quæ fuit in eodem Com. per Breve noſtrum de Recto, inter* A. *Petentem, &* B. *Tenentem, de uno meſuagio cum pertin. in* I. *ſine dilatione fieri fac'*, &c. *Teſte*, &c.

Writ

Writ de Error.

A Writ of Error properly lyeth where Falſe Judgment is given in any Court which is a Court of Record, as in the Common Pleas, or in *London*, or other City, or other place where they have power to hold Plea by the King's Charter, or by preſcription, in any ſum in Debt or Treſpaſs over the ſum of 40 s. And if Falſe Judgment be given in *London*, or other place which is a Court of Record, the party grieved ſhall have a Writ of Error, and this Writ may be returned into the Common Pleas, or into the King's Bench, at the pleaſure of him who ſueth the ſame.

22 H. 6. 11. The form of Writ of Error to the Juſtices of the Common Pleas is Joh. *Priſot Capital'. Juſt. & ſoc. ſui, & non Capital. Juſt. ſuorum*, for the Records there are not before him alone But in the Exchequer the Writ is not *Theſaurario & Baronibus*, but *Baronibus tantum*. 34 H. 6. 27. Error was brought 3 *dies* from the Return, where the Judgment was the firſt day, and well, becauſe after the Judgment 15 E. 4. 12. If a Record be removed out of the Exchequer into the Exchequer-Chamber by Error, when Judgment is given all ſhall be remanded into the Exchequer, and Execution ſhall be awarded there, but that is by the Statute of 31 E 3. cap. 12. otherwiſe it is of other Courts

And when the Record is removed by Writ of Error into the Common Pleas or King's Bench, then the Plaintiff ought to aſſign his Error, before he have a *Scire facias* againſt the Defendant *ad audiendum errores*. And if he aſſign divers things for Errors which the Court thinketh to be no Errors, he ſhall not have a *Scire facias* upon this Aſſignment. But after Errors aſſigned, and a *Scire facias* awarded againſt the Defendant upon that Aſſignment, he ſhall not *aſſign an Error* in fact, as to ſay, that the Plaintiff was dead at the time of the Judgment, or before the Judgment, &c. But he may aſſign as many Errors as do appear in the Record, and it ſhall not be ſaid a double aſſignment. But he ſhall aſſign for Error but one Error in fact, becauſe this Error in fact ſhall be tried by the County, and the Errors in the Record ſhall be tried by the Juſtices.

37 Aſſ. 17. for aſſignment of many Errors in Law.

32 H. 6. 30. Note, that the party aſſigned Error upon an iſſue, and the Court ſaw the Original that it was not good, for it was *ex aſſignatione*, where it ought to be *ex diviſione*, and therefore the Court *ex officio* did abate the Writ.

And upon a Writ of Error the Record it ſelf ſhall be removed and not the Tranſcript of the Record: for upon a Tranſcript of a Record a man ſhall not aſſign Errors, if it be not upon a Writ of Error ſued upon Tranſcript of a Fine, there he ſhall aſſign Errors upon the Tranſcript of the Note of the Fine; and if the Juſtices do conceive it Error, then they ſhall ſend for the Note of the Fine, and ſhall reverſe the ſame.

In a Writ of Error when the Record cometh in Court, if the Plaintiff all that Term do not aſſign his Errors, and although

though that he do assign his Errors, if he do not sue a *Scire fac. ad audiendum Errores* against the Defendant, returnable the same Term, or the next Term; all the matter is discontinued, and the next Term he ought to sue a new VVrit of Error out of the Chancery, upon that Record directed to the Justices before whom the Record is removed, to proceed upon the Record *quæ coram vobis residet.* 2 H 7.12.

The form to assign Errors is to put a Bill into the Court, and to say in the Bill, *in hoc erratum est*, &c. and to shew in certain in what things, and *in hoc erratum est*, and shew in certain another thing: and so of the rest in which he will assign the Errors. But to say, *in omnibus erratum est*, is not good, because of the incertainty. 35 H 6.12. If the Writ of Error hath longer day of return than it ought to have, the Justices of the Common Pleas may shorten the day.

A And in a Writ of Error he ought to assign his Error in proper person, and not by Attorney, where he is in Exe-
B cution by force of the Judgment. And in a VVrit of Error upon Judgment given in the Common Pleas, the Plaintiff cannot assign for Error, that the Justices of the Common Pleas did not give that Judgment, but the Clerks of their own heads; neither can he assign for Error, that the Jurors gave their Verdict for the Defendant, and that the Justices entred it for the Plaintiff, and gave Judgment for him: because that this assignment is contrary to that which the Court doth as Judges, &c. 5 H.7.1. 8 H.7.10. 7 H.7.4. 21 H 6.43. [21.]

C And if a man be vouched, and entreth into Warranty and loseth, he may have a Writ of Error, and assign the Errors which happened betwixt the Demandant and the Tenant, or betwixt the Demandant and the Vouchee. And so he in the Reversion who prayeth to be received upon the Default of Tenant for life, or for his faint Pleading, if he be received, and pleadeth, and loseth, he shall have a VVrit of Error, and assign the Error betwixt the Demandant and the Tenant, or between the Demandant and him who prayeth to be received. And if Tenant for life loseth by Default, he in the Reversion shall have a Writ of Error, although he were not received, nor prayed to be received, and shall assign for Error the matter which was betwixt the Demandant and the Tenant who lost by Default. 8 *H.*4.55,56. 50 E.3. All the Reversion was granted to one pendant the Writ against the Lessee for life, or if the Tenant in Fee pray in aid of a stranger, *Quære*, for in these cases he in the Reversion shall have Error.

D A man shall assign an Error in Law as the Case is: as if the Husband and Wife levy a Fine of the Lands of the Wife unto a stranger, the Wife being within age, they shall have a Writ of Error during the Nonage of the Wife, and shall assign that for Error, and that is an Error in Law of the Court. 50 E.3.5. But *Quære* if the Judgment shall be reversed, and that Execution shall be awarded, or shall cease during the life of the Husband.

20 Aſſ. 2. 2c. 21 E. 3. Fitz. Error 4. 7 H. 6. 39. matter in fait muſt be pleaded, and ſhall not be aſſigned for Error. 2 E. 4. 19. By *Pigot* and *Choke*, in Joynt-tenancy, General-tenancy, Miſnoſmer, taking of Husband pendant the Writ, and the like, which prove the Writ abatable, there if the party plead other matter, and admit the Writ, he ſhall not have Error: *Contra* of Death or other thing, which prove the writ abated.

Alſo in a Writ of *Entrie ſur Diſſeiſin*, if the original Writ want theſe words in the Writ, *Quam clamat eſſe jus et hæreditatem ſuam*, if the Tenant admit of the Writ, and plead to the Action, and loſeth, he ſhall not aſſign this fault in the Writ, becauſe he hath admitted the Writ to be good by his Plea. And ſo in a Writ of *Detinue of Charters* concerning certain Lands, if the Plaintiff in his Count do not declare the certainty of the Land in the Count, if the Defendant do admit the Count good, and pleadeth unto the Action and loſeth by Judgment given in a Writ of Error ſued by him, he ſhall not aſſign for Error the fault in the Count; becauſe he hath admitted the ſame to be good by his Plea. *Tamen quære.*

2 H. 5. 2. 40 E. 3. 15. vid. 21. E. 3. 46. Br. Error 65. and Trial 35.

And a man ſhall not aſſign for Error a thing which is for his advantage: as to ſay and aſſign for Error that he had day, and that the day was for longer time than the common day: and ſo he ſhall not aſſign for Error that he was eſſoigned, where he ought not to be eſſoigned, or had Aid granted unto him, where he ought not to have had Aid; becauſe theſe things are for his advantage.

19 H. 6. 12. Falſe Judgment in *Wales* before Juſtices, Errors there ſhall be reverſed in B. R. if there be Juſtices there; but by *Forteſcue* it ſhall be reverſed in Parliament, 19 H. 6. 12. Error in County Palatine ſhall be reverſed in B. R. 21 H. 7. 13. per *Finux* Erroneous Judgment in County Palatine ſhall be reverſed there by Commiſſion 37 H. 6. 13. Error in Chancery reverſed in Parliament. But *ſee* 14 H. Dyer 315. That Error upon a *Scire facias* upon a Recognizance was reverſed in B. R. which ſeemeth contrary to 37 H. 6. 13.

If falſe Judgment be given before the Juſtices of the Biſhop of *Durham* in the County Palatine, the party grieved ſhall have a Writ of Error there before the ſame Biſhop M. 14 E. 3. And if he give falſe Judgment, then the Writ of Error ſhall be ſued in the Common Pleas, or in the King's Bench.

7 H. 4. 17. 1 H. 7. 13.

And if falſe Judgment be given for the King in any Suit or Action, the party grieved ſhall have a Writ of Error, and *aſſign his Errors*, without ſuing forth any *Scire Facias* againſt the King *ad audiendum Errores*, becauſe that the King is always preſent in Court; and that is the cauſe of the form of Entries of Suits for the Kings is ſuch: Chriſtopher' Hales *Attorn. Domini Regis qui pro Domino Rege ſequitur &c. ven. hic*

in Cur', &c. and not, *Dom. Rex per* C. H. *Attorn. ſuum, venit. hic in Cur'*, becauſe that the King is always preſent in Court. 1 H. 7. 13. It is ſaid, if any be to reverſe utlagery in felony, when he cometh in upon the Indictment, he ſhall aſſign his Error before he proſecuteth his Writ of Error.

I Error in the King's Bench in the Proceſs, where it is the Default of the Clerks, ſhall be reverſed in the ſame Court by a Writ of Error ſued by the party before the ſame Juſtices: but not without ſuing of a Writ of Error, although it be the ſame Term. But in the Common Pleas, after Judgment given the ſame Term the Juſtices may reverſe their own Judgment upon Error in the Proceſs, or for default of the Clerks, without any Writ of Error ſued forth; but in another Term, the party ought to ſue forth a Writ of Error thereupon returnable into the King's Bench. But of an Error in Law which is the Default of the Juſtices, the ſame Court cannot reverſe the Judgment by a Writ of Error, nor with a Writ of Error, but this Error ought to be redreſſed in another Court before other Juſtices by a Writ of Error.

Vide 4 E. 4. 41. 7 H. 6. 28. *Hidebrand's* Caſe 19 H. 6. 2. 15. E. 4. 78. 37 H. 6 17. per 3 Juſtices. If a man be utlage notwithſtanding a *Superſedeas*, and appear and plead in the Common Pleas, the utlary ſhall be reverſed in the ſame place, although it be in another Term, but contr. if it be in another Term, and the Defendant doth not appear and plead.

K And he which confeſſeth the Demandants Action ſhall have a Writ of Error to reverſe that Judgment, againſt his Confeſſion upon Erroneous Judgment given.

L In Plea of Land againſt the Tenant, and the Tenant dyeth, he who is Heir of the Tenant to that Land ſhall have a Writ of Error, and not he who is his Heir at the Common Law: as in Borough-Engliſh if the Tenant loſe the Land by Erroneous Judgment, the youngeſt Son ſhall have M the Writ of Error. And ſo he which is Heir unto the ſpecial tail ſhall have the Writ of Error, if the Land be loſt by Erroneous Judgment. The Tenant may have one Writ of Error, and the Vouchee another Writ of Error upon the ſame Judgment; and ſo the Tenant, and the Tenant by Réceit, and all depending at one time. And an Executor or Adminiſtrator ſhall have a Writ of Error upon a Judgment given againſt the Teſtator for Debt or Damages. And ſo the Heir ſhall have a Writ of Error to reverſe an Outlawry of Felony pronounced againſt his Father, to reſtore the blood betwixt him and the Father. And if a man plead in any Action, and the Juſtices will not allow thereof, and the party makes his Bill upon it, and prayeth that the Juſtices will Seal

3 H. 4. 19. the Daughter to the tail brought Error, although a Son were Heir at Common Law. Vid. 1 Ma. Dyer 89, 90. 20 E. 3. Fitz. Error 2. 11 H. 4. 65.

[22.] Seal this Bill of his Acceptance or Plea, and if they do according as is contained in the Statute of *Weſt.* 2. *cap.* 3. the party grieved ſhall have a Writ of Error, and may aſſign Error upon that Bill ſo ſealed, and alſo in the Record, or in one of them at his pleaſure: but this Bill ought to be ſealed by the Juſtices before Judgment given by them, and not after, as it appeareth *Anno* 11 *H.*4. 52, 65, 92.

Vid. 3. H. 3. the laſt caſe. Vid. devant 21 L.M.N. The Succeſſor of an Abbot, Prior, or Parſon, or ſuch bodies Corporate, ſhall have a Writ of Error of a Judgment given againſt their Predeceſſor; of all things which touch the Succeſſion or Corporation. But if a man recover againſt a Parſon or a Biſhop Debt or Damages by Judgment or Action Perſonal, their Executors ſhall have the Writ of Error upon that Judgment, and not their Succeſſors, becauſe that matter doth not concern the Corporation. A

18 E. 3. 25. 17 Aſſ. 24. Error 71. yet the Lord by Eſcheat ſhall not have Error. If a man ſue forth Execution erroneouſly againſt the Recogniſor upon a Recogniſance, the Feoffee of the Recogniſor ſhall have a Writ of Error. If a man purchaſe his pardon of an Outlawry, yet he may have a Writ of Error to reverſe the Outlawry. *H.* 18 *E.* 3. But if a man do diſclaim in a *Præcipe quod reddat* of Land, and the Demandant doth recover, the Tenant ſhall not have a Writ of Error againſt his own Diſclaimer: but if he plead *Non-tenure*, and the ſame be found againſt him, for which the Demandant recovereth, the Tenant ſhall have a Writ of Error *H.* 6. *E.* 3. A man condemned ſhall not aſſign Error in the Proceſs; but in the Original Writ he may. B C

15 Aſſ. 8. and ſo 9 E. 4. 14. that a ſtranger ſhall not have Error. 6 E. 3. 7. Fitz. Error 78. 21 H. 7. 31. It is no Error to ſuffer one to make Attorny in an Action in which he ought not to make any Attorny. D

5 E. 2. Error 89. no Error ſhall be brought here but upon Default of Juſtice of the Original here, but the ſame remains there, and ſo is 37 Aſſ. 5. Fitz. Aſſ. 328. Upon falſe Judgment given in the Common Pleas in *Ireland* the Writ of Error ought to be ſued there; and returnable in the King's Bench in *Ireland*: but upon a Judgment given in the King's Bench in *Ireland*, the Writ of Error ſhall be ſued and returned in the King's Bench in *England*. E

King's Bench in *Ireland*. And note that it is ſaid, that there is no

VVhen the Record cometh into Court by a Writ of Error, the Plaintiff ſhall aſſign his Error, and ſhall have a *Scire facias* before the Record ſhall be entred; for the ſame ſhall not be entred before the parties have day by the *Scire facias*. F

And the Proceſs in this VVrit is *Alias* and *Pluries*, and upon that Attachment ſhall be awarded againſt the Judge who ought to return the Record, to whom the Writ was dire- G

cted:

ded: and the *Pluries* may be returned into the Common Pleas, or in the Chancery, if the *Pluries* iſſueth to the Juſtices of the Common Pleas to remove the Record; and if the Writ iſſueth to another baſe Court, the *Pluries* ought to be returned into the Chancery, or into the ſame Court where it is made returnable. And if it be returned into the Chancery with the Record, the Chancellor himſelf with his own hands may put the Record into the Common Pleas without any Writ of *Mittimus* thereunto, and that as well as if he had ſent a *Mittimus* with the Record.

Error in London.

NOte that if any Erroneous Judgment be given in the Courts before the Sheriffs of *London*, the party grieved ſhall have a Writ of Error out of the Chancery directed unto the Sheriffs, to bring that Record before the Major and Aldermen in the Huſtings of *London*, which Huſtings is a Court holden before the Major, &c. And there the Record ſhall be examined: and if there be Error, they ſhall reverſe the Record there by the Cuſtom of the ſaid City. And if the Sheriff after the Record is removed before the Major, &c. in the Huſtings will award execution upon the Record againſt the party, the party againſt whom the Execution is awarded ſhall have a ſpecial Writ out of the Chancery directed unto the Sheriffs, that they take ſufficient Sureties of the party to ſatisfie the King, and alſo the party, of that which appertaineth unto them, if the Judgment be affirmed, and that they ſurceaſe to do Execution; and if they have taken the party in Execution, that they deliver him out of Priſon. And the form of the Writ is ſuch:

A Feme Covert was received in the Common Pleas to acknowledge a deed inrolled, where they have not power to examine her without a Writ. *Quære* it Error, for it is not adjudged if it be Error or not. *Quære* the uſage at this day. So of an Infant.

21 E. 3. 29. Br. Error 62. vid. 32 H. 8. That a Statute nor Deed inrolled ſhall not be taken by the Common Law of an Infant or Feme Covert. Contr. by the Cuſtom of *London*, per 29 H. 8. 23. & 7 E. 4. 5. *Lit.*

I *Rex Majori & Vic.* London. *ſalut'. Ex parte* R. &c. *nobis eſt oſtenſum, quòd cum ſecundum Conſuetud. in Civitate prædicta, in caſu quando aliquis, ſive Queréns ſive Defendens, queritur, quòd in Loquela quæ fuerat in Curia noſtra coram Vic. Civitatis prædict. Errores aliqui interven', & Record. & proceſſ. Loquelarum illarum cauſa erroris intervenient. is venire faceret in Huſtingo Civitatis prædict', ad Errores idos corrigendos, Vicecom. Civitatis illius execution. prioris judicij coram eis reddit. faciend. ſuperſed. debeant, pendentibus in Huſtingo Recordis & proceſſibus Loquelarum illarum indiſcuſſarum; ac nos nuper ad proſecutio-*

uem præf. R. ſuggerentis Errorem in Recordo & proceſſu Loquelæ, quæ fuit coram vobis præfat. Vic. in Curia noſtra Civitatis prædict. per Breve noſtrum, inter A. & prædictum R. de eo quòd idem R. &c. interveniſſe manifeſtum, vobis præcipimus, quòd Recordum & proceſſum ejuſdem coram vobis in Huſtingo prædict. venire facgretis ad Errorem ſi quis fuerit, corrigend'; vos nihilominus Vicecom. (pendente in Huſtingo prædict. dictâ Loquela de Errore indiſcuſſâ) executionem prioris judicij fieri facitis minùs juſtè, in ipſius R. diſpendium non modicum & gravamen: Vobis igitur præcipimus, quòd ſi ità ſit, quòd idem R. invenerit vobis ſufficientem Secur. de ſatisfactam vobis de eo quod ad nos in hac parte pertinet, quàm præfat. A. de arreragiis & dampnis ſibi in hac parte adjudicatis ſi contigerit primum judicium affirmari. & ad faciendum ulterius & recipiend. quod Curia noſtra conſideraverit in hac parte, tunc execut. priorus judicij faciendo ſuperſedeatis pendente in Huſtingo prædict. Loquelâ de Errore ſupra dict. Et ſi idem R. occaſione judicij illius captus ſit, & in priſona noſtra detentus, tunc ipſum R. à priſona illâ, ſi occaſion. prædict', & non alid detineatur in eadem, per ſecuritat. prædict' interim deliberar. faciatis, ut dict. Loquelam ſuam de Errore proſequi poſſit. Teſte, &c.

[23.]

And it appeareth by this VVrit, that a man ſhall have an Action againſt any perſon in *London*, by Original out of the Chancery directed unto the Sheriffs of *London*, and that they ſhall hold Plea thereof. And a man ſhall have the like *Writ of Error* upon a Judgment given in *London* before the Sheriffs by Plaint ſued there before them, without any Writ original ſued, &c. And the *Writ of Error* ſhall be directed unto the Major, and alſo to the Sheriffs, although that the Judgment be given in the Sheriffs Court before them, to remove the Record into the *Huſtings* to reverſe it there, if, &c. And the form of the VVrit ſhall be thus:

A

B

Rex Majori & Vic. Lond' ſalutem, &c. Quia in Recordo & proceſſu, ac etiam in redditione judicij Loquelæ quæ fuit in Curia noſtra Civitat. prædict' coram vobis præf. Vice-comitibus ſive Brevi noſtro, ſecundum Conſuetud. ejuſdem Civitatis, inter A. & R. de quadam tranſgr. eidem A. per præf. R. illata ut dicitur, Error intervenit manifeſtus, ad grave dampnum ipſius R. ſicut ex querela ſua accepimus; Nos Errorem (ſi quis fuer.) modo debito corrigi, & partibus prædict. plenam & celerem juſtitiam fieri volentes in hac parte, Vobis præcipimus, quòd ſi judic' inde reddit. ſit, tunc Record. & proceſſ. Loquelæ prædict' coram vobis in proxim. Huſting. noſtro ejuſd. Civitatis venire, eâque in præſentia partium prædict. per vos præf. Vicecomites ſuper hoc præmuniend', ſi intereſſe voluer', reſitari, & diligenter examinari, &

C

Errorem

Errorem (ſi quis fuerit) in hac parte modo debit. corrig. & partibus prædict' plenam & celerem juſtic' indè fieri, faciatis, ut de jure & ſecund. Conſuetud. Civitatis prædict. fuerit faciend'. Teſte, &c.

D And the VVrit of *Superſedeas* unto the Sheriff, to ceaſe to do Execution pendant the *Writ of Error*, may be made and contained in the ſame VVrit of Error which is directed unto the Major and Sheriffs to remove the Record into the Huſtings.

E And if erroneous Judgment be given in the Huſtings in *London* before the Major and the Sheriffs there, then the party who will ſue to reverſe the Judgment ſhall come into the Chancery, and there ſue a Commiſſion, directed to perſons to examine the Record, and Proceſs, and the Errors, and thereupon to do right. And the Commiſſion ſhall be thus:

34 H. 6. 42. When Error is ſued upon a Judgment before the Major, it ſhall be at *S. Martins*,

and then the Major and Aldermen ſhall have 40 days to be adviſed of their Records, and the Recorder ſhall record the ſame, *Orr iſtam.*

Rex dilectis, &c. R. *&* S. *ſalutem. Ex parte* B. *accepimus, quòd in Recordo & proceſſu, ac in redditione judicij Loquelæ quæ fuit coram Majore & Vic.* Lond. *in Huſtingo noſtro ibidem ſine Brevi noſtro, inter* C. *&* præd. B. *de quadam tranſgr', &c. illata, at dicitur, Error intervenit manifeſtus: Nos, in defectu eorundem Majoris & Vicecomitum, volentes Errorem illum (ſi quis fuer') debito modo corrigi, & partibus indè fieri Juſtitiæ complementum, aſſignamus vos Juſtic. noſtros, vna cum ijs quos aſſociavim', ad præd. Record. & proceſſus examinand', & Errorem (ſi quem in eis, aut in riddicione judic. Loquelæ præd. invenire contigerit) corrigend', & ad plenam & celerem juſtic. indè partibus faciend' ſecundum Conſuetud. Civitatis præd. Et ideo vobis mandamus, quòd ad certum diem, quem ad hoc providerit is, ſuper ſanct. Martin. magnum* Lond. *accedatis, & in defectu præd. Majoris et Vic. præmiſſa fac. in forma præd. ſatisfier', &c. ſecundum legem et conſuetud. noſtri, et Civitatis præd'; ſalvis, &c. Mandamus, &c. eiſdem Majori & Vic', quòd ad certum diem, quem eis ſciri fac', Record. & proceſſ. Loquelæ præd', cum omnibus ea tangentibus, & partes præd', coram vobis ad locum præd. venire fac'. In cujus, &c. Teſte, &c.*

And upon this Commiſſion the Juſtices ſhall award a Precept unto the Major and Sheriffs, to ſend the Records and Proceſs before them at a certain day, and to warn the parties to be before the Juſtices at the ſame day, &c. And the King ſhall ſend another Writ unto the Major and Sheriffs, to have the Record and Proceſs before the ſaid Juſtices at the day

assigned by the Justices by their Precept made unto the Major and Sheriffs. And upon this Commission the King may make association and another Writ *Si non omnes* directed unto the Justices to proceed, although that some of them do not come as he shall do in an Assise, or in *Oyer* and *Terminer*, &c.

And a man shall have a Commission to examine the Errors, and Judgment given in the Hustings in the time of another King, and in the time of another Major, and other Sheriffs; and the form of the Commission is such: G

Rex dilectis, &c. Quia ex parte B. accepimus, quòd in Recordo et processu, &c. [usque ib. *justitiæ complementum*] *assignavimus vos tres, et duos vestrum Justiciar. nostr', ad Recordum & processum Loquelæ prædict', in præsentia nunc Majoris & Vic. Civitatis prædict', per vos super hoc præmuniend', si interesse voluerint, ad Ecclesiam sancti* Martini *magni* Lond. *supervidend. & examinand', &c.* [ut suprà usque ib. *Civitat. prædict'.*] *Et ideo vobis mandamus, quod ad certum diem, &c. provideritis, usque dictam Ecclesiam sancti* Martini *magni* London. *accedatis, et præmissa omnia & singula fac. & explicet. in forma prædict' fiatur', &c. secundum Legem &* [24] *Consuetudinem Civitatis prædict', salvis, &c. Mandamus etiam eisdem nunc Majori & Vicecom', quòd ad certum diem quem vos, &c. eis sciri fac. Record' & processum Loquelæ prad', cum omnibus ea tangentibus, quæ penes ipsos residen, ut dicitur. coram vobis, &c. ad locum prædict' venire fac'; præfatisque Vic. quòd ipsi scire fac. præf. B. quòd tunc sit ibi, Error', si quis in Recordo & processu prædict', &c.* ut supra in præmiss', &c. *Teste* &c.

And upon this Commission the King shall send another Writ unto the Major and Sheriffs of *London*, to send the Record and Process before the said Justices, &c. And the Writ in the beginning thereof shall rehearse the effect of the Record and Process, and also it shall rehearse the Commission which he hath made to be directed unto certain Justices, to examine, &c. and to do Justice thereupon: and then he shall say in the end of the Writ, *Et ideo vobis præcipimus, quod ad certum diem, quem eidem* R. F. & S. *vel duo eorum, vobis sciri fecerint, Record. et proceff. Loquelæ prædict', cum omnibus ea tangentibus, quæ penes vos residen, ut dicitur, coram eis vel duobus eorum ad locum prædict. venire fac', vosque præfat. Vic scire fac. præf. A. quòd tunc sit ibi, Errorem illum (si quem in Recordo et proceff. prædict. aut in redditione judic. Loquelæ prædict. intervenire contigerit) audituri, & ulterius fiatur & receptur. quod Curia nostra consideravit in hac parte. Et habeat', &c.*

And if a man hath Judgment given for him in *London* be-

fore

fore the Sheriffs in their Courts, or before the Major and Sheriffs in the Huſtings of *London*, and the Defendant, to delay the Execution of the Judgment, ſueth a Writ of Error to remove the Record before the Major, &c. and after the party Defendant who ſued that Writ of Error will by ſubtil means convey his Goods out of the City, or otherwiſe waſte them, to the intent that the Plainant may not have Execution of his Goods; then the Plainant who had Judgment to recover ſhall have a ſpecial Writ directed unto the Major and Sheriffs, that they provide that the Goods amounting unto the value of what is recovered be ſafely kept to ſatisfie the Plaintiff, if the Judgment be affirmed for him; ſo that Execution may be done of the firſt Judgment upon the ſame Goods.

B And if Judgment be given before the Sheriffs of *London* for the Plaintiff, and the Defendant ſueth a Writ of Error, and removeth the ſame before the Major and Sheriffs in the Huſtings, and when he hath removed it by a Writ of Error, if he will proceed no farther upon the Writ, &c. then the Plainant who recovered ſhall have a ſpecial Writ unto the Major and Sheriffs that they proceed unto the Examination of the Errors, and to do Execution, if the Judgment be affirmed. And upon that Writ he ſhall have an *Alias*, and a *Pluries, vel cauſam nobis ſignifices* in the *Pluries*, if he will not proceed, &c. And this Writ was deviſed by *Parning* then Lord Chancellor, and by him diligently examined, as it appeareth by the Regiſter.

C And if Falſe Judgment be given in *Ireland*, the party may ſue a Writ of Error in the Kings Bench in *England*; and the Writ ſhall be ſuch:

Rex dilect. & fidel. ſuo A. Juſtic. ſuo Hibern', ſalutem. Quia in Recordo et proceſſ' &c. Error, &c. ad grave dampnum ipſius B. ſicut ex gravi querelâ ſuâ accepimus: Nos &c. quòd Record. & proceſſ. Loquel. pr. æd', cum omnibus ea tangentibus, nobis ſub ſigillo veſtro diſtinctè et apertè mittatis, et hoc Breve, ità quòd ea habeamus tali die, &c. prout, inſpect. Record. & proceſ. præd', ulterius indè fieri faciamus quod de jure fuerit faciend'. Et ſcire fac. pref. S. quòd tunc ſit ibi, ad procedend. in Loquela præd', et ad faciend. & recipiend. quod Curia noſtra conſideraverit in premiſſ. Teſte, &c.

Error.

REx dilecto et fideli suo L. de T. salutem. Quia in Record. et processu ac in redditione judicij Loquelæ quæ fuit coram vobis et sociis vestris Justiciar. nostris de Banco per Breve nostrum, inter A. & B. de Record. et processu Assisæ Novæ disseisinæ, quæ inter eos summ. fuit et capta apud S. coram dilectis et fidelibus nostris L. de Lat. sociis suis Justic', &c. Assign', de Tenementis in W. quæ quidem Recordum et proceſſ. coram vobis certis de causis venire fecimus, Error intervenit manifestus, ad grave dampnum ipsius A. sicut ex querela sua accepimus: Nos, Errorem (si quis fuerit) in hac parte modo debito corrigi, et partibus prædict. Justitiam inde fieri volentes, prout decet, Vobis Mandamus, quòd si judic. inde redd. sit, tunc tam Record. et proceſſ. Loquelæ prad. coram vobis sic habit', quàm etiam Record. et proceſſ. Assisæ præd. coram vobis missa, cum omnibus ea tangent', nobis sub sigill. vestro, &c. ità quòd ea habeamus, &c. ut his inspectis, &c.

And this VVrit of Error lieth where the Aſſiſe paſſeth in the County before the Juſtices of Aſſiſe, and afterwards it is removed into the Common Pleas, and there is Judgment given: Now the party may ſue this VVrit of Error if there be any Error in the matter, and upon that he may have an *Aliàs* and a *Pluries*, if the Juſtices will not rectifie the Record, &c.

And if the Juſtices of that Bench or other Juſtices upon the VVrit of Error will not certifie all the Record, then the party who ſueth the VVrit of Error may alledge diminution of the Record, and pray a VVrit unto the Juſtices who certified before the Record, to certifie all the Record; and the VVrit ſhall be ſuch:

[17]

Rex dilecto et fideli ſuo W. de T. ſalut'. Cùm nos nuper ad profecutionem L. de H. nobis ſuggerentis, in Recordo et proceſſu, ac etiam in redditione judicij Loquelæ quæ fuit coram vobis et ſocijs veſtris Juſtic. noſtris de Banco per Breve noſtrum, inter W. de T. Petentem et L. de R. Tenentem, de xx. meſuagijs cum pertinen. in S. Errorem inter-veniſſe manifeſtum, Vobis mandavimus, quòd ſi judic. inde redditum eſſet, tunc Record. et proceſſum Loquelæ præd', cum omnib. ea tangentibus, nobis ſub ſigillo veſtro diſtinctè et aptè mitteretis, et Breve noſtrum quod vobis inde venit, ita quòd ea haberemus in Craſtin. ſancti Martini proximo præterit', ubicunque tunc eſſemus in Anglia: At jam ex parte prad. L. de H. nobis eſt oſtenſum, quòd licet vos prætextu Brevis noſtri præd. Record. et proceſſum præd. in aliqua ſu

ſui parte coram nobis ad diem Craſtin. miſeritis, aliqua tamen eorund. Record. & proceſſ. notum quædam alia ea tangentia adhuc reſtant coram vobis mittend', in ipſius Lde H. dampnum non modicum et gravamen: Ideo vobis Mandamus, quòd ſi ita eſt, tunc reſiduum Record. et proceſſ. præd', necnon omnia alia ea tangentia, quæ ut præd. eſt reſtant coram vobis mittenda, nobis ſub ſigillo veſtro diſtinctè et apertè mittatis, et hoc Breve, ita quòd ea habeamus, &c. ut ulteriùs in præmiſſ. &c.

Dedimus poteſtatem de Attornato faciendo.

IT ſeemeth that before the Statutes which gave power unto a man to make an Attorny, the Juſtices would not ſuffer that the Plaintiff or the Defendant, or the Demandant or the Tenant ſhould make Attorny in any Action, Suit or Bill, in any Court of Record, nor in any other Court which was not a Court of Record, becauſe the words of the VVrit do command the Defendant for to appear, &c. and that was always taken to be in proper perſon.

The form of Entry in every Action for the Plaintiff or Demandant is; *Et præd. Quer. obtulit ſe iiij. die,* &c. *et præd. Def. non venit; ideo præceptum eſt Vic', quòd* &c. by which it is taken, that the Plaintiff was to appear in proper perſon. But now by the Statutes he may make Attorny in a Court-Baron, or other Courts; and may make Attorny for Suit Perſonal at the Hundred or other Court-Baron; but for Suit Real at the Leet, or at the Sheriffs Torn, he cannot do it by Attorny, but he ought to do the ſame in proper perſon. But it ſeemeth that the King by his Prerogative, and before the Statutes, might give warrant unto a man to make Attorny in every Action or Suit, and that as well unto the Demandant or Tenant, as unto the Plaintiff or Defendant; and that he may direct his Writs or Letters unto the Judges of Courts, commanding them to admit and receive ſuch perſons by their Attorny, and that the Judges are bound to do the ſame. And it ſeemeth one cauſe is, becauſe it ſhall not be Error, if the Judge do admit any Plaintiff or Defendant to make Attorny in any Suit or Action in which by the Law he ought not to make Attorney: *duod vide* in Title of Error *H.* 36 *E.* 3. and Title Attorny *T.* 37. *H.* 6. Br. Attorny 14.

D And if Tenant for life be impleaded in a *Præcipe quòd reddat*, he in the Reverſion may pray to be received to defend his right upon the Default of the Tenant, or upon his faint pleading, and there he cannot pray to be received by his Attorny. But if he bring a VVrit unto the Juſtices out 37 H. 6. 27. Br. Attorny 12.

of the Chancery, teſtifying that he hath made Attorney there, and rehearſe the cauſe wherefore, that is to ſay, becauſe he is ſick, or other reaſonable cauſe, and commanding them to receive ſuch perſon by Attorney for him in the Reverſion; the Court ought and is bound to receive him by his Attorney. And it is not material whether the cauſe put in the Writ be true or not, for it is not traverſable, &c.

Alter 27 E.

And the King by his Letters Patents may Licence a man to make a general Attorney *in omnibus placitis motis & motivis, & in quibuſcunque Curiis*: and by his Letters Patents he may expreſs who ſhall be Attorney, &c. or may grant to make Attorney whom or who he will, without naming any Attorney by his ſpecial name.

And the King by his Writ may ſend to any perſon to receive Attorney for another, ſuch perſon generally as the other will name, or ſuch perſons ſpecially; and that may be as well for the Demandant or Plaintiff, as for the Defendant or Tenant.

Regiſter 9 Br. Attorney 84. that is intended of the Kings Court, for it doth not extend to baſe Courts, as Court-Baron, &c.

And the King may give Authority unto one perſon to receive Attorney for another in all Pleas, and in all Courts, for two or three years. And the King may grant a *Dedimus poteſtatem* to receive Attorney for another for a ſpecial cauſe recited in the Writ, becauſe he is languiſhing, or lame, or decrepit, &c. or ſuch other like ſpecial cauſe. Or he may grant a *Dedimus poteſtatem* in the generalty, to receive Attorney for another in all Pleas, without expreſſing any cauſe in certain wherefore he doth ſo.

Vide 32 H. 6. 22.

And alſo it appeareth by the Regiſter, that the King by his Letter Patents may grant unto the Prior of St. *Johns of Jeruſalem*, that he may make two of his Friers, and name them, &c. in his place, which is in the place of a Proctor; that the two Friers ſhall make Attorney for the Prior in every Action which is pendant, or to be brought againſt him in any Court, &c. and for to challenge his Liberties, and for to defend them.

[26.]

And alſo the King by his Letters Patents may grant unto an Abbot, for the Devotion that he oweth to the Houſe, that he may make a general Attorney for all Pleas, and in all Courts; and the ſaid Abbot may remove him and put others in his room as often as it ſhall ſeem good and needful for him ſo to do: and ſo by this it doth appear that the King may grant unto all his Subjects to make Attorneys in the ſame manner, without putting or ſhewing any cauſe in the Letters Patents.

And it appeareth by the Regiſter, that the King may grant

grant the ſame as well by Letters Patents under his Privy Seal, as by Letters Patents under his Great Seal.

And when the King makes a general Grant unto an Abbot, or unto any other, to make ſuch general Attorneys, then it ſeems the Abbot ſhall come into the Chancery, or ſhall ſend his Deed under his Seal unto the Chancellor, witneſſing that he hath made ſuch and ſuch perſons his Attorneys, &c. And thereupon the Chancellor ſhall make Letters Patents unto the Abbot, teſtifying that he hath made ſuch and ſuch perſons his Attorneys in all Pleas and Courts, and upon theſe Letters Patents ſhewed unto the Court, the Judge ought to admit and receive thoſe perſons for Attorneys for the party; and theſe Letters Patents ſhall be entred upon Record in the Chancery.

C And the King may ſend his Writ unto the Juſtices of the Common Pleas, or unto the Juſtices in Eyre, or other Juſtices whatſoever, teſtifying that ſuch a one hath made his general Attorney in all Pleas and Quarrels moved againſt him or by him, and alſo to challenge his Franchiſes, or to defend his Franchiſes, commanding the Juſtices by the Writ that they receive him for Attorney, &c.

There is another Writ alſo in the Regiſter, That the King by his Writ ſhall command his Juſtices in Eyre, that they admit and receive the claim of ſuch a one to certain liberties which he ſhall make and claim before them by his Attorney, becauſe himſelf cannot be perſonally before them at the day.

D There is another form of Writ to the Juſtices, that they admit ſuch a one by his Attorney, whom the ſaid party ſhall make his Attorney by Letters Patents under his Seal.

And a man may make his Attorney before the Juſtices, without making an Attorney in Chancery, or without ſuing any Writ unto the Juſtices, commanding them to admit any Attorney for the party Plaintiff or Defendant; as the common courſe is at this day for an Attorney for every party to appear in every manner of Action, that they can appear by Attorney, and put in their Warrants without any ſuch Writs; if not that they be in Writs of Entry in the Poſt, or Writ which is by Covin between the parties, or a Writ of Right: then the Juſtices in diſcretion do not admit any man to appear as Attorney for the party Defendant, unleſs the Defendant do before ſome Juſtice confeſs him to be his Attorney, and that the Juſtices do record the Warrant, or otherwiſe that he bring a Writ out of the Chancery teſtifying that he hath there made Attorney,

ney, commanding them for to receive him for his Attorney.

But there are divers Caſes in which the Juſtices will not admit the Defendant by Attorney, as if he came in by *Capi Corpus*, they will not admit him by Attorney until he hath pleaded ſome Plea, and then in diſcretion they uſe to ſuffer the Defendant to make Attorny. But if the Defendant come by *Capi Corpus* upon the Exigent, the Juſtices will not admit him to take Attorney, but give him day by Bail from Term to Term until the matter be determined; and that ſeems to be at their diſcretion for his contumacy, for in that caſe if they do admit him to make Attorney, and to go without Bail, it is no Error; as it ſeemeth unto me.

42 E.3.11.
47 E.3.21.
21 E.4.77.
33 H.6. 28.
Vid.9 E. 4. 36.
2 H.4. 23.
3 H.42.
41 E.3. 29.

At the *Grand* or *Petit Cape* returned, the Tenant may appear by Attorney, and tender to wage his Law, and take day to wage the ſame; at which day he ought to appear and make his Law.

37 H.6.27. ac'.

And a man ſhall not make an Attorney againſt the King in any Action ſued by the King.

37 H.6. 27. ac'.

Upon a Reſcous returned by the Sheriff, and an Attachment awarded upon it againſt him, the Defendant ſhall not make Attorney; but upon his appearance ſhall be preſently committed unto the Fleet. But if the King ſend a Privy Seal unto them, commanding them that they admit Attorney for him, the Court ought to receive the Attorney without appearance in proper perſon.

5 H.7.7. one cannot aſſign Errors by Attorney.

And a man ſhall ſue a Writ of Error by Attorney if he be not in VVard.

In an Appeal the Plaintiff ſhall make Attorney againſt the Abettors, if ſue againſt them a *Diſtringas*, &c.

1 H.7.27.
7 H.4.2.

In a *Quem redditum reddit* the Defendant ſhall not make Attorney but with aſſent of the parties.

32 H.6.22.
39 E.3.26.
after 147. 2.

In a *Quid juris clamat*, or *Per quæ ſervitia*, after a Plea pleaded the Defendant ſhall make Attorney. It ſeemeth likewiſe in a *Quem redditum reddit*.

21 E.3.48.
Hill.br. Attorney 36.

In a *Præmunire* the Defendant ſhall not make Attorney without a ſpecial VVrit directed to the Juſtices.

15 H.7.9.
9 E.4.2. ac'.

After a *Capias ad computandum* awarded, the Defendant ſhall not make Attorney.

32 H.6.22.

A man may demand Conuſans of Pleas by Attorney.

9 H.7.11.

The Plaintiff after appearance ſhall make Attorney in an Appeal by the Statute of *Henry* the 7.

3 H.7.cap. 1. Raſtal. Murder 2.

He who pleads *Miſnoſmer* ſhall not make Attorney; *quid vide P.41 E.3. et M.45 E.3. Fitz. Attorney 52.*

[27.]
27 H.8.11.

In a *Scire facias* upon a Charter of Pardon, the Plaintiff is

in the *Scire facias* ſhall not make Attorney, but with the aſſent of the other party he may. 41 E.3. Attorney 50.

C A Feme Covert may be Attorney for her Husband. 2 R.3.9. Perkins 42.

D At the *Sequatur ſub ſuo periculo*, the Vouchee ſhall not enter into the Warranty by Attorney. 11 H.4.28. Newton ac.

E In *Attaint* the Petit Jury ſhall make no Attorney. 21 H.7.39.

F The Defendant ſhall not make an Attorney in *Maikem.* cont.

G An Idiot ſhall not be received to ſue or defend in any Action by Gardian, or by *prochein amy*, but ought to be always in proper perſon. *P.33.H.6.fol.20.* 21 E.4.73. 33 H.6.18.

H An Infant ſhall ſue by *proch. amy*; but if the Infant be Defendant in any Action, he ſhall make his Defence by Gardian, and not by *prochein amy*. And the Court ſhall aſſign the Gardian for the Infant Defendant, and that is commonly one of the Officers of the Court. 40 *E.3. fol.16.* 29 Aſſ. 67. Aſſiſ.273. 3 H.6.17. Markham.

An Infant ſued a Writ of *Waſte* againſt his Gardian and made Attorny in that Action, 43 *E.3.16.*

An Infant was received to ſue an Action of *Debt* by his Gardian, 16 *H.7.5.* 34 H.6.32. it ought to be ſued in proper perſon by one of full age. 34 Aſſ.5.ac.

I And a man ſhall not anſwer as Gardian unto an Infant who is Plaintiff or Defendant without a Warrant; but as *prochein amy* to an Infant he ſhall ſue an Action without a Warrant.

K The Infant ſhall not remove his Gardian, nor diſavow an Action ſued for him in *prochein amy*, *Anno* 43 *E.3. Lib. Aſſ. et Anno* 27 *E.3. Lib. Aſſ.* 53.

L And the King by his Letters Patents may make a general Gardian for an Infant to anſwer for him in all Actions or Suits brought or to be brought in all manner of Courts. Or may make two or three Gardians joyntly and ſeverally to anſwer for him, or to bring any Action for him; and at the requeſt of the Infant may grant by the ſaid Letters Patents, that the ſaid Gardians may make other Gardians joyntly or ſeverally in their places, to ſue or defend for the ſame Infant in all Actions and Suits which are brought or ſued, or ſhall be brought or ſued after.

M And the Infant ſhall have a VVrit in the Chancery for to remove his Gardian directed unto the Juſtices, and for to receive another, &c. and the Court at their diſcretion may remove the Gardian, and appoint another Gardian. 3 H.6.16.

N And ſee in the Regiſter after the Writ of *Protection cum clauſula Nolumus*, Writs directed unto the Bailies of Hund. to receive and admit ſuch perſons by Attorney in Court. An Infant appeared by Gardian, although it be in a perſonal Action; but *Quære* if he can ſue perſonal Action by Prochein amy 8 H.6.1. Abbot.

which

which the party will make under his Seal, or otherwiſe: and alſo Writs of *Dedimus poteſtatem* to remove Attorneys made, and to put others in their places, or to remove any of the Attorneys, and to put another in his place. And if a man O make Attorneys in Chancery to anſwer and defend in other Courts, he may come in Chancery and remove him, and make others his Attorneys: and thereupon he ſhall have a Writ unto the Juſtices of the Court where the Attorney is, teſtifying that he hath removed him, and made another his Attorney, commanding them for to receive him, &c.

3 H. 4. 18. Feme proceeded to be received and plead, which was not by Attorney. 21 H. 6. 48. cont.

There is a *Dedimus poteſtatem* granted in the Regiſter to P receive an Attorney for him who is Vouchee, becauſe he is received for the Default of Tenant for Life: and a Writ directed unto the Juſtices to receive an Attorney for a Woman, who prayeth to be received for the Default of her Husband, before ſhe be received. And another Writ unto Q the Juſtices, to receive Attorney for one Defendant, and Gardian for another Defendant.

In *Quale jus* awarded, where a *Scire facias* ſhall be award- R ed againſt the Lord's mediate and immediate, they ſhall have a Writ directed to other perſons to receive Attorney for them to appear to this *Quale jus* to defend their right; and upon certificate thereof in the Chancery he ſhall have a Writ to the Juſtices before whom the *Quale jus* is to be tried, to admit him who is received Attorney, and ſo re-

before 25. E. turned in the Chancery, for Attorney for the Lords in that Action.

In Detinue, or Ward, where ſhall be Enterpleading, they S ought to appear in proper perſon and enterplead, &c. And yet upon reaſonable cauſe he may make Attorney in the Chancery, and ſhall have a Writ unto the Juſtices to receive him for his Attorney, and rehearſe the cauſe wherefore; yet it ſeemeth it is not material whether the cauſe be true or no.

Alſo there is another Writ in the Regiſter directed unto T the Juſtices for him in the Reverſion, where Tenant for life is impleaded, commanding them for to admit Attorney for him in the Reverſion, if the Tenant for Life make Default, as he conceiveth he will; and teſtifie in the ſame Writ, that he in the Reverſion hath made ſuch and ſuch his Attorneys joyntly and ſeverally, commanding the Juſtices to receive them for Attorneys, becauſe that he in the Reverſion hath ſuch an infirmity that he cannot pray to be received, in proper perſon. And the like Writ for a Feme Covert, who hath a Reverſion, and the Tenant for life is impleaded, and

ſhe

ſhe conceiveth that her Husband will not pray to be received, &c. But in the Writ it ſhall be mentioned that the Feme is decrepit, or hath ſome other infirmity, that ſhe cannot conveniently come to be received in proper perſon.

V There is another manner of Writ for the Sheriff, or for the Eſcheator, to cauſe the Barons of the Exchequer to admit Attorneys for them to make their Proffers in the Exchequer; and yet they are commonly bound in Recognisſance to do the ſame in proper perſon. And the Writ is ſuch:

A *Rex Theſaurario & Baronibus ſuis de Scacc. ſalut'. Quia dilectus nobis de* B. *Vic. noſter* Suff. *circa præd' ardua negotia noſtra, de quibus ipſum ſpecialit. oneravimus, in tantum eſt intendens, quòd coram vobis ad Scaccar. noſtrum ad inſtans Craſtin. S.* Mich', *vel ad inſtans Oct. Paſch. proxim. futur', ad Proffrum ſuum tunc ibidem, prout moris eſt, perſonalit. intereſſe non poteſt; Vobis mandamus, quòd* R. *&* I. *Cleric', quos idem Vic. ad Proffrum ſuum præd. coram vobis ad dictum Craſt. faciend. coram nobis in Canc. noſtra loco ſuo attornavit, vel alterum ipſorum, ſi ambo intereſſe non poſſint, loco ipſius Vic. ad hæc recipiat. hâc vic. de gratia noſtra ſpeciali, ipſum Vic. propter abſ. ſuam ad diem illum, vel ad Oct. præd', non moleſtant. in aliquo, ſeu gravant'. Teſte,* &c. [28.]

And the Eſcheator may have the like Writ for his profers to make Attorney. But it ſeemeth this is not a Writ of courſe, but upon a ſpecial commandment directed unto the Chancellour by the King to make ſuch Writ, &c. And the King may ſend a Writ unto the Treaſurer and Barons of the Exchequer, to reſpit the Account of the Sheriff, and of the Eſcheator; and the Writ ſhall be ſuch:

Rex Theſaur. & Baron', &c. ſalut'. Quia dilectus nobis W. *de* H. *Vic. noſter* Wiltes', *circa quædam,* &c. ut ſuprà, *eſt intendens, quòd coram vobis ad Scaccar. noſtrum ad inſtans Craſt.* S. Mich. *proxim. futur', ad Compotum ſuum de exitibus Com. præd', venire non poteſt; dedimus ei reſpect. de Compoto ſuo præd. reddendo uſque ad Oct. habit* S. Hilar. *proxim. futur': Et ideo vobis mandamus, quòd ipſum Vic. reſpectum illum interim habere permittatis. Teſte,* &c.

Pro-

Protection.

Protections are in divers forms, and of divers effects, and the King may grant them for divers causes. And there are four manner of Protections with the clause *Volumus*. One is a Protection called, *Quia profecturus*. And another Protection, *Quia moratur*. And the third is a Protection which the King by his Prerogative may grant; and the same is where a man is Debtor unto the King, the King may grant unto him that he shall not be sued nor attached, but taketh him into Protection until he hath paid the King his Debt. But now by the Statute of 25 *E.*3.19. it is ordained. That the Creditor shall have an Action against the Kings Debtor, and shall have Judgment against him notwithstanding such Protections. But he shall not have Execution against the King's Debtor who hath such Protection, unless he take upon him to pay the Debts which the King's Debtor owed unto the King; and then he shall have Judgment and Execution against the King's Debt, or for both Debts, &c.

There is another Protection *cum clausula volumus*: and that is, when the King sendeth a man in his service into the wars beyond the Seas, or into the Marches of *Scotland*, and there he is detained and kept Prisoner; he shall have a special Protection reciting the whole matter; and in the end of the same Protection shall be such clause: *Præsentibus minimè valituris post deliberation. præd. R. à prif. præd' si contingat ipsum iterum liberari ab eadem.* And the form of divers of these Protections doth appear in the Register. But as the Law is now, every Protection cast shall not be allowed: for if the Protection be to endure for two or three years, the Justices will not allow the same; and therefore the form of the Protection at this day is to endure for one year and a day after the date thereof, and then to sue forth a new Protection if need be. And a Protection may be cast for the party by a stranger as well as by the party himself.

39 H.6.39. And Protection *Quia profecturus* shall not be allowed if it be presented hanging the Plea, if he be not in a voyage Royal; and a voyage Royal is, where the King goeth to the War, or his Lieutenant, or his Deputy-Lieutenant, and not otherwise.

And the Plaintiff cannot cast a Protection, for the Protection is always for the Defendant, and shall be cast for him; if it be not in special Cases, where the Plaintiff becometh Defendant. But when a Protection shall be allowed, and

and when not, appeareth more plainly in the Title of *Protection* in the great Abridgment of the years, and therefore it is not needful to ſhew it here.

H And by the *Regiſter* a man ſhall be by Protection when he ſtayeth *ſuper ſalva cuſtodia Weſt-marchiæ* Angl. *verſus* Scotiam. Yet *Anno* 22 *E.*4. ſuch Protection was diſallowed. But I am of opinion with the Regiſter.

I A Protection *Quia Moratur* upon the Sea was diſallowed, *Trin.* 36.*H.*6. becauſe that the Sea cannot ſtay, and by conſequence he cannot ſtay upon the Sea.

K And a Protection ſhall be allowed in a Court of Ancient Demeſn, or in other Court of Record, as *London*, &c. And when the Plea is removed, the Protection may be allowed: and a Protection allowed for one Defendant doth put the Plea without day for all the reſt; if not that it be in ſpecial caſes, as in Treſpaſs, where they plead ſeveral Pleas, and he ſhall ſue ſeveral *Venire facias* upon the Iſſue joyned againſt them, &c. 7 H.6.21. cont. if they plead. *vide* Plea in Treſ. 15 E.4.27. 4 H.4.4. 3 H.4.5.

And a Protection ſhall be ſometimes diſallowed for variance betwixt the VVrit and the Protection: But ſee that in the Title *Protection* in the Abridgments.

L Protection ſhall be allowed for an Infant, but there are divers opinions amongſt the Juſtices, if it ſhall be allowed for a Feme-Covert.

M And how a Protection ſhall be made void, ſee Title *Protection*, and in the Title of *Repeal* in the Abridgments. [29.]

A There is another manner of Protection, *cum clauſula Nolumus*, as appeareth in the Regiſter: and that is, where an Abbot, or a Prior, or other Spiritual perſon be in fear or doubt, that his goods, or Chattels, or his Cattel ſhall be taken by the King's Officers for the King's ſervice, they may purchaſe this manner of Protection *cum clauſula Nolumus*.

B And by the Regiſter appeareth, that the King may grant unto a Secular man this Writ as well as unto a Spiritual man; and if he do ſo, the ſame is good, &c.

C And a man may excuſe his Default at the Grand *Cape* or Petty *Cape* by caſting of a Protection.

And if a man be Eſſoigned of the King's ſervice, the Plaintiff may have a ſpecial VVrit directed unto the Juſtices to diſallow of the Eſſoin, if he be not in the King's ſervice, commanding them for to proceed, &c.

D And it appeareth by the Regiſter, *fol.* 280. that there are divers manners of forms of Protections: where a man feareth to travel the Country with his Merchandiſes, or to collect the Alms for the Poor of an Hoſpital, or of the Church, then

then they may purchase Letters Patents of the King's Protection, commanding the King's Subjects for to defend them, and to maintain, aid and assist them: and the form is such:

Rex omnibus Ballivis & fidelibus suis ad quos, &c. salut'. Supplic. nobis A. ut cùm ipse diversa negotia sua in diversis Cur. nostris, & alibi infra regnum nostr. Angliæ, prosequit', ac idem A. occasione prosecutionis hujusmodi timeat tam sibi quàm hominibus & servien. suis, in personis & rebus suis, per quosdam æmulos suos, & eorum procuration', dampn', & thus, dampn. de corpore suo & jacturam de bonis suis de facili, &c. & periculum de facili posse evenire, volumus securitati suæ in hac parte prospicere gratiosè; Nos, pacem & tranquilitatem ubicunque in regno nostro conservare volentes, suscipimus ipsum A. et negotia sua præd. in dictis Cur. nostris, et alibi infra regnum nostrum Angliæ prosequend', ibidem morando, et exinde ad propria redeund', necnon homines et servien. suos, ac res et bon. sua quæcunque in protection. et defension. nostras speciales: Et ideo vobis mandamus, quòd ipsum A. dicta negotia sua in Cur. nostris, et alibi infra regnum nostrum præd. (ut præmittitur) prosequendo, ibidem morando, et exinde ad propria rèdeund'. necnon homines et servien. suos, ac res et bona sua quæcunqui, manuteneatis, protegi, et defendatis, non inferentes eis, seu, quantum in vobis est, ab aliis inferri permittentes injuriam, molestiam, dampnum, violentiam, impedimentum aliquod, seu gravamen. Et si quod eis forisfactum seu injuriat. fuerit, id eis sine dilatione fac. emendar': dum tamen idem A. quicquam quod in nostri seu populi nostri præjudicium, aut contra Ordination. per Dominum E. nuper Regem Angliæ avum nostrum, et Consil. suum nuper inde fact', enervation. cedere poterit, non prosequat', aut attemptet, vel attemptare seu prosequi præsumat ullo modo. In cujus rei testimonium, &c.

And these Letters may be made and directed to Sheriffs, Admirals, Majors, and all other Officers, &c. And thereby it appeareth that they ought to see and provide, that such persons who have purchased such Letters have by reason by of such Letters favour and right done unto them, because it appeareth the King's will so to be, &c. And there is the like Protection for those who go with Pardons, or to make Collection for Bridges or High-ways; and the like for Spiritual persons; and the like Protection for Merchants strangers, which go into the Country to gather their Debts; or to sue for them, &c. There is another form of Protection, which is such:

Rex universis et singulis Vic', Escaet, Majoribus, Ballivis, Mini-

Miniſtris, ac omnibus fidelibus ligeis noſtris quibuſcunque, tam Communibus Vill. noſtræ de Southwark, *quàm aliis infra Libertates & extra, paſcentes Literas noſtras viſuris vel audituris ſalutem. Sciatis, quòd ſuſcepimus in protect. noſtram ſpecialem* T.W. *ac homines & ſervien. ſuos, maneria, terras, & tenementa, bona & poſſeſſiones ſuas in* London, Southwark, Hathm', & H. *in com.* Surr', *ac in* S. C. & D. *in Com.* K. *exiſtent', necnon hæc ſcripta & munimenta ſua quæcunque. Et ideo vobis mandamus, quòd ipſum* T.W. *ac homines ſervientes, maneria, terras tenementa, bona, poſſeſſiones, literas, ſcripta, & munimenta præd. manutin', protegatis, et defendatis, non inferentes eis, aut eorum alicui inferr. permittentes injur', moleſtiam, damnum violentiam, waſtum, deſtruct', ſeu domorum vel aliorum bonorum et catall. ſuor. incendium, ſeu aliud impediment. aliquod vel gravamen: Et hæc in fide dilectione et ligeantia quibus nobis tenemini, ſub gravi forisfact. noſtra, nullatenus omittatis, nec aliquis veſtrum omittat. In cujus, &c, per unum ann. dur'. Teſte,* &c.

H And another Protection for the Prior of S. *Johns*, and for his Protectors. &c. And thoſe are of divers forms, as appeareth in the Title of *Protection* in the Regiſter, and therefore ſee them there. But theſe Protections are by the King granted of grace: for every man who is a loyal ſubject is in the Kings Protection; but theſe Protections are granted to move and excite the Kings ſubjects to aid and comfort thoſe who have ſuch Protections, in their buſineſs which they have to do in the Countries for the cauſes men-
A tioned in the Protections. And it appeareth by the Regiſter, that every Spiritual perſon may ſue forth a Protection [30] for him and for his goods, and for their Fermors of their Lands for their goods, that they ſhall not be taken by the King's Purveyors, nor their Carriages or Chattels taken by other the Kings Officers. And it appeareth by the ſame Protection, that King *Edward* in the 14. of his reign by ſpecial Statute did grant ſuch priviledge to the Clergy, whom he took into his Protection with their goods and Carriages. And they may have a ſpecial Commiſſion directed unto certain perſons to arreſt ſuch Purveyors or Officers, and to ſend them before the Kings Council, there to anſwer their miſdoings in ſuch caſe. And for the ſame Protection ſee the Regiſter, *fol.* 189.

Writ de Droit de Advowſon.

A Writ of Right of Advowſon lieth only for him who hath an Eſtate in the Advowſon to him and his Heirs in Fee-ſimple, or right of Eſtate to him and his Heirs in Fee ſimple in the Advowſon; and if he be diſturbed to preſent, then he ſhall have the Writ. But if a man have an Advowſon to him and the Heirs of his body begotten, and for default of ſuch iſſue; &c. the Remainder unto him and his Heirs in Fee-ſimple; if he be diſturbed, he ſhall not have this Writ, but a *Quare impedit*, becauſe he hath not Title to the Advowſon but in tail, and he ought to maintain the Action by that Title that he claimeth the poſſeſſion of the Advowſon, and that is of an Eſtate in tail. And in this Writ he ought to count of his own poſſeſſion, or of the poſſeſſion of his Anceſtor, otherwiſe the Writ doth not lie, and he ought to alledge Eſplees in the Parſon; as in taking of groſs Tithes, Oblations, and Obventions unto the value of, &c. And the Tenant ſhall come and make defence, and may joyn the Miſe by Battel, or Grand Aſſiſe, &c. And ſee the form of the Count, and the Defence, and of joyning the Miſe, in the Book of *Entries*, *fol.* 90.

4 E.3.12. Willby Briefe 713. & Br. Eſtates 63. Tenant in tail brought this Writ, and recovered but an Eſtate in tail. 24. Aſſ. 4. Br. tail 24. he may have *Darrein preſentment*.

And a man who claimeth to have Fee-ſimple in an Advowſon may have a Writ *de Recto de Advocatione mediet. Eccleſiæ, vel tertiæ partis, vel quartæ partis Eccleſiæ, &c.*

39 H.6.20.a.

And when a Parſon ſueth in the Spiritual Court for Tithes, which do amount unto the fourth part of the Advowſon, againſt the Parſon of another Pariſh; then that Parſon who is ſued in the Spiritual Court may purchaſe a Writ which is called *Indicavit*; which Writ is a Prohibition, and ſhall be directed as well unto the Judge of the Court as unto the party, that they do not proceed in the Plea, &c. And then the Patron of that Parſon who is ſo prohibited by the *Indicavit*, may have and ſue a Writ of Right *of the Advowſon of Diſmes*; and the form of the Writ is ſuch:

31 H.6.13.a.

Præcipe A. quòd reddat B. Advocation. Decimarum tertiæ partis Eccleſiæ de S. vel quartæ partis, vel mediet. Eccleſiæ, &c.

And this Writ is founded upon the Statute of *Weſt.*2.*c.*3. in the end of the Statute, and doth not lie of a leſs part of the Tithes than of the fourth part of the Church. But it ſeemeth that at the Common Law before the Statute, a VVrit of *Droit des Diſmes* lay and was maintainable; as, *Præcipe quòd reddat Advocationem Decimarum quintæ partis, vel ſextæ*

ſextæ partis Eccleſiæ, &c. And that by the Statute of 18 *E.* 3. which is: *Whereas Writs of* Scire facias *have been granted to warn Prelates and other Religous Clerkes to anſwer* Diſmes *in our Chancery, and to ſhew if they have any thing, or can any thing ſay, wherefore ſuch* Diſmes *ought not to be reſtored to the ſaid Demandants, and to anſwer as well to us as to the parties of ſuch* Diſmes; *that ſuch Writs from henceforth be not granted, and the Proceſs hanging upon ſuch Writs be annulled and repealed, and that the parties be diſmiſſed from the Secular Judges of ſuch manner of Pleas: Saving to us our right, ſuch as we and our Anceſtours have had, and were wont to have of reaſon.*

F And by that appeareth, that before that Statute the right of Tithes was determined in the King's Temporal Court: but the Statute now hath altered the Law. And if a Parſon be ſued in the Spritual Court for the fourth part of the Tithes, for which he purchaſes *Indicavit, &c.* by which the Judges do ſurceaſe; if the Patron of the Parſon which ſueth in the Spiritual Court hath but an Eſtate in tail in the Patronage, or for term of life, he ſhall not have a VVrit of *Droit des Diſmes*, nor other remedy by the Common Law, to try the right of the Tithes, for the feebleneſs of the Eſtate: But if two be ſeiſed of an Advowſon, and unto the Heirs of one of them, they ſhall joyn in a VVrit of Right of Advowſon for the advantage of him who hath the Fee-ſimple. 31 H. 6. 14.

G And alſo a man ſhall not have a VVrit of *Indicavit* before that the party hath libelled againſt him in the Spiritual Court. And he ought to ſhew the Copy of the Libel before the *Indicavit* be granted: and the *Indicavit* doth not lie after Judgement given in the Spiritual Court. 12 E. 4. 13. b

H And a VVrit of Right *de Advocatione Decimarum & Oblationum quartæ partis Eccleſiæ*, lieth as well as *de Advocatione Decimarum quartæ partis Eccleſiæ tantùm.*

I If one be Parſon imperſonee, and another be Vicar in the ſame Church, and one of them be impleaded of the fourth part of the Tithes of the Parſonage, and the other impleaded of the fourth part of the Tithes of the Vicarage, they ſhall have ſeveral VVrits of *Indicavit*, and their Patrons may have ſeveral VVrit of Right of Advowſon of the Tithes, &c. [31.]

[K And it appeareth in 13 H. 6. by the opinion of *Forteſcue*, that before the VVrit of *Indicavit* lay of Tithes ſued in the Spiritual Court, there was no VVrit of *Droit des Diſmes* ſued thereupon. But it ſeemeth againſt reaſon; for the VVrit of

Droit of Tithes lay as well for the Patron, as the *Indicavit* lay for the Parſon.

And in 31 *E.* 1. it appeareth that a man ſhall have a B Writ of Right *de medietate Advocationis*, where an Advowſon is partable betwixt two Coparceners, and one of them is diſturbed by a ſtranger.

But the Writ of Right *de Advocatione medietat. Eccleſiæ* lay where two Coparceners do preſent two Parſons to one Advowſon, &c. As there are in ſome Churches two Parſons, &c.

And a Writ of Right of Advowſon lieth *de Advocatione* C *Vicariæ, vel præbend', vel Capellæ*, and ſuch like, as well as *de Advocatione Eccleſiæ*. And the King ſhall have ſuch Writ as well as a common perſon. But a man ſhall not tender a D Demy-mark againſt the King to enquire of the Seiſin alledged in the King's Court, or Declaration, as he ſhall in caſe a common perſon bring the Writ. Neither ſhall a man have final Judgment againſt the King, although it be after the Miſe joyned betwixt the King and the Tenant.

And a man ſhall have a Writ of Right of Advowſon of a E Chappel which is a Donative, as well as he ſhall have if it were preſentable to the Ordinary.

Aſſiſe de Darrein Preſentment.

THe form of the Writ of *Darrein Preſentment* for a com- F mon perſon is ſuch:

Rex Vic. ſalutem. Si A. fecerit te ſecur', &c. tunc ſum', &c. xii. liberos et legal. homines de viſn. de B. *quod ſint coram Juſtic. noſtris, &c. parati Sacramento recognoſc. quis Advocat. tempor. pacis preſentavit ultim. Perſonam, quæ mortua eſt, ad Eccleſiam de* C. *vel ultim. Vicar', qui mortuus eſt, ad Vicar. de* N. *quæ vacat, ut dic', et cujus Advoc. idem* A. *dic. ad ſe pertinere; et interim Eccleſiam illam videant, et nomina earum imbreviari fac', et ſum.* B. *qui Advoc. illam ei deforc', quod tunc ſit ibi, audit. illam Recog'. Et habeas ibi Summ', et hoc Breve. Teſte, &c.* But for the King the Writ is; *Rex Vic. ſalutem. Sum' per bonos Sum. xii. liberos, &c.* and ſhall not ſay, *ſi Rex fecerit, &c. te ſecur', &c.* becauſe the King ſhall not find Pledges to ſue an Action, for he ſhall not be amerced, &c.

Note, that upon *Quæ advocatus, &c.* 20 E. 3. *Darrein Preſentment* 13. per Welby, & 9 E. 2. *ibid.* 17. It the Aſſiſe

And Title for a ſtranger not named in the Writ, a Writ to the Biſhop ſhall be warded for him: and therefore one cannot make Title to a Preſentment in time of war. 7 E. 2. *Darrein Preſentment*, 26 E. 3. 41. *ibid.* 42. c'.

And

G And a man ſhall have Aſſiſe of *Darrein Preſentment*, although he nor his Anceſtors do preſent to the laſt Avoidance: as if the Tenant for life, or for years, or in Dower, or by the Courteſie, ſuffer an Uſurpation unto a Church, &c. and die, he in the Reverſion, who is Heir unto the Anceſtor who laſt preſented, ſhall have an Aſſiſe of *Darrein Preſentment*, if he be diſturbed. But if a man preſent, and then grant the Advowſon unto another for life, and he ſuffer one Uſurpation, or two, or three Uſurpations; now at the next Avoidance he in the Reverſion, ſhall not have an Aſſiſe of *Darrein Preſentment*, if he be diſturbed to preſent. And that appeareth by the Statute of *Weſt.* 2. *cap.* 5. That the remedy of the Statute is given for the Heir of him who made the Demiſe, who is in Reverſion, and not for the Leſſor himſelf. 10 E. 1. *Darrein Preſentment* 13. If the Aſſiſe find that Tenant by the Curteſy, or Tenant in Dower was the laſt who preſented, by that the Heir ſhall have a Writ to the Biſhop, and yet he cannot make Title by that preſentment. *Contr.* in a *Quare Imped.* And Scrope gives the reaſon, becauſe he cannot convey by them. But if the Heir do alledge the laſt Preſentment in her ſelf, and the Aſſiſe be to her by Default, and found *ut ſupra*, yet the Heir ſhall recover. *Cont.* If they be at iſſue upon that Preſentment

H And if a man preſent unto an Advowſon, and afterwards the Parſon doth reſign, or is depoſed, and the Patron preſents again, and is diſturbed, he ſhall have an Aſſiſe of *Darrein Preſentment*; and the form of the Writ ſhall be; *Quis Advocatus tempore pacis preſentavit ultim. perſonam, quæ mortua eſt ad Eccleſiam*, &c. although that he reſign, and be living. And the form of the Writ is to ſuppoſe that the Defendant doth deforce him of the Advowſon, and yet by his Count he counteth, that he or his Anceſtors laſt preſented unto the Advowſon, by which he doth ſuppoſe that he is in poſſeſſion of the Advowſon; and yet the ſame is good. 16 E 2. *Darrein. Preſentment* 20. 20 E. 3. *Darrein preſentment* 11.

I If a man do preſent unto an Advowſon unto which he hath right, and afterwards the Incumbent dyeth, and a ſtranger uſurpeth, and preſenteth unto this Advowſon in the time of War, and after that Incumbent dyeth; now if he who hath right do preſent again, and be diſturbed, he ſhall have an Aſſiſe of *Darrein Preſentment*, and this Preſentment made in time of War by the ſtranger ſhall not grieve him. 6 E 3. 41. *Darr. Preſentment* 4. 7 E. 3. *ibid.* 2.

And ſo if a man preſent unto an Advowſon, and afterwards the Incumbent dyeth, and another Ordinary doth preſent by Lapſe another Incumbent, and after that Incumbent dyeth; now the right Patron ſhall preſent, and if he be diſturbed, he ſhall have an Aſſiſe of *Darrein Preſentment*, notwithſtanding the mean Preſentments. 4 E 2. *Darr. Preſent.* 16. 20 E. 3. *ibid.* 13. for the Ordinary ſhall preſent in the right of him who hath right.

And ſo if the Gardian do preſent in the right of the Heir,

Vid. 14 E. 3. *Darrein preſent.* 19. *Berry* ſaith that he hath ſeen the preſentment in the name of the Heir 20 E. 3. *ibid.* 12. *Green* ac. 5 H. 7. 16. ac. 50 E 3. *Holt* contr. 14 H. 7. 12. per *Fairfax.*

Heir, and the Incumbent dyeth, the Heir ſhall preſent; and if he be diſturbed, he ſhall have an Aſſiſe of *Darrein Preſentment*, although the Guardian did preſent the mean and the laſt Preſentment. But if a man preſent unto an Advowſon, and after leaſe the ſame for term of years; and after the Church is void, and the Tenant for years doth preſent, &c. and then the Incumbent dyeth, and the leſſor preſenteth, and is diſturbed; it ſeemeth that he ſhall not have an Aſſiſe of *Darrein Preſentment*, becauſe the Tenant for years did preſent in his own right. But Tenant for years ſhall have Aſſiſe of *Darrein Preſentment*, if he have preſented before; and ſo ſhall the Gardian of the Heir, if he have preſented before.

[32]

If a man uſurp upon an Infant, and preſent, which Infant hath the Advowſon by deſcent; and afterwards the Incumbent dyeth the Infant ſhall preſent; and if he be diſturbed, he ſhall have an Aſſiſe of *Darrein Preſentment*. But if the Infant purchaſe the Advowſon, and preſent, and afterward the Church become void, and a ſtranger preſent, and uſurp upon the Infant, and then the Incumbent dyeth, the Infant preſents, and is diſturbed by a ſtranger; he ſhall not have a *Darrein Preſentment*, but ſhall be put to his VVrit of Right.

25 H. 6. 60. Mes Com. 236. *Quare.* Yet all is one deſcent per 11 E. 3. Aſſiſe 87. 17 E. 3. *Darr. Preſentment* 9. *Shard*, ſhe hath no other remedy but a *Quare Impedit. Pole* ac.

If the Husband and wife preſent unto an Advowſon in the right of the VVife, which is appendant to a Manor of the VVives, and after the Husband alien one Acre, parcel of the Manor, with the Advowſon in Fee unto a ſtranger, and dyeth, and the ſtranger preſents, and alieneth the Acre unto another in Fee, ſaving the Advowſon unto himſelf, and then the Church voideth; the VVife ſhall preſent; and if ſhe be diſturbed, ſhe ſhall have an Aſſiſe of *Darrein Preſentment*, becauſe the Advowſon was ſevered from the Acre: but if the Advowſon were appendant to the Acre, then the Wife ought to recover the Acre before ſhe preſent to the Advowſon.

20 E 3. *Dar. Preſ.* 11. and 13. but they ſeem to make a difference, when the diſturbance is before the compoſition to preſent by turn, and when after.

And Aſſiſe of *Darrein Preſentment* doth not lie for one Coparcener againſt the other, as appeareth *M.* 15 *E.* 3. and *M.* 20 *E.* 3.

And if one Defendant die in a *Darrein Preſentment*, the VVrit is good by the ſurvivor againſt the other.

If a Diſturber preſent unto an Advowſon, and the Patron bring an Aſſiſe of *Darrein Preſentment*, and pendant the VVrit the Incumbent dyeth, if the Diſturber preſenteth another

ther Incumbent dyeth; yet the Patron ſhall have an Aſſiſe of *Darrein Preſentment* upon the firſt Diſturbance againſt the Heir of the Diſturber, *per* Journeys accounts: and ſo if the Diſturber preſent two or three times within the ſix months, the very Patron ſhall have an Aſſiſe of *Darrein Preſentment* upon the firſt Diſturbance.

11 H. 6. 32. The Church never is Litigious betwixt Parceners, for if they cannot agree, the Ordinary ought to admit the Preſentee of the eldeſt; but contrary of Joynt-Tenants.

D *Et proviſum fuit coram Domino Rege, Archiepiſcopis, Epiſcopis, Comitibus, & Baronibus, quòd nulla Aſſiſa ulimæ præſentationis de cætero capiatur de Eccleſiis Præbendatis, nec de Præbendis,* Hil. 19. H. 3.

This Proviſo is taken away by *Weſt.* 2. 29.

Quare Impedit.

E THe form of the VVrit of *Quare Impedit* for the King in the right of his Crown is ſuch:

Rex Vic. Lincoln' *ſalutem. Præcipe.* VV. *Archiepiſcopo & R. quòd permittant nos præſentare idoneam Perſonam ad Eccleſiam de W. quæ vacat, & ad noſtram ſpectat Donationem, & unde prad' W. Archiep. & R. nos injuſtè impediunt, ut dicitur. Et niſi,* &c. *ſum',* &c. *præd. Archiep. & R. quòd ſint coram nobis,* &c. *vel coram Juſtic. noſtris de Banco,* &c.

Vid. Fitz. Na. B. 25. Where a man may have an Aſſiſe of *Darrein Preſentment*, there he may have a *Quare impedit*, but not *e Contra*. C. 5. part 102. In a *Quare Impedit* the writ *fuit ad Eccleſiam*; and the Count *de Advocatione duarum partium.*

For the King may ſue this Writ, and every Writ, in what Court he will.

F And if, the King hath Title to preſent unto an Advowſon by reaſon of the Lands and Temporalties in his hands, of a Biſhoprick, or Abbey, or Gardianſhip of any Heir, then the Writ is:

Rex Vic. London' *ſalutem. Præcip.* W. *Archiepiſcopo, quod permittat nos præſentare idoneam Perſonam ad Eccleſiam de W. quæ vacat, & ad noſtram ſpectat Donationem, ratione Epiſcopatus* Cantuar' *nuper vacant', & in manu noſtra exiſtent', & unde idem Archiep. nos injuſtè impedi', ut dic',* &c.

And if it be unto a Prebend, then thus: *Ad Præbendam de* I. *in Eccleſia,* &c. *quæ vacat,* &c. *ratione Epiſcopatus,* &c. And if it be by reaſon of Ward, then the Writ ſhall be; *Quæ vacat, & ad noſtram,* &c. *ratione Cuſtod. terr. et hæredis T. quondam Comitis de* A. *defuncti, qui de nobis tenuit in capite, et in manu noſtra exiſtentis, et unde præd',* &c. *nos injuſtè* &c.

And if it be by reaſon of Wardſhip by occaſion of another Wardſhip, then the Writ is; *Que vacat et ad noſtram, &c. ratione Cuſtodiæ terr. et hæred.* I T. *in manu Domini E. nuper Regis Angl', Patris noſtri, ratione Cuſtod. terræ et hæredis S. de* C. *quondam Comitis* Glouc. *defuncti, de quo idem* I. *terram ſuam tenuit per ſervitium militar', in manu ejuſdem Patris noſtri exiſtent', et unde idem, &c. nos injuſtè imped', ut dicitur.*

And by the Regiſter, the King ſhall joyn with another perſon in a *Quare impedit*; and the form of the Writ is ſuch: *Rex vic', &c. præcip. R. de* C. *quòd juſtè, &c. permittat nos et* G
P. *de* T. *præſentare idoneam Perſonam ad Eccleſiam de* K. *que vacat, et ad noſtram, ratione Cuſtod. terræ et hæred.* I. *quæ fuit uxor* T. *de* N. *qui de nobis tenuit in capite, defuncti, in manu noſtra exiſtentis, et ad ipſius* P. *de* T. *ſpectat Donation', et unde pred', &c. nos et prefat. P. de* T. *injuſtè imped.*

21 E. 3. Br. *Quare Impedit.* But now the common opinion is, that the King ſhall have the whole Preſentment alone, and alone ſhall have the Action. But methinks that it ſtands with reaſon that the King and the other joyn; as in a popular Action the party ſhall ſue for the King and for himſelf, and the words of the Writ are: *Qui tam pro Domino Rege, quàm pro ſuipſo ſequitur, &c.* and that in an Action of Debt, &c. and by the ſame reaſon the King may ſue for himſelf and for the party. And the common experience is, that a man ſhall hold Lands in common with the King, and alſo Chattels: and By the ſame reaſon they may have the Preſentment or Advowſon in common.

And if a man be diſturbed to preſent unto a Parſonage, H then the Writ ſhall be; *Pred', &c. quòd permittat ipſum præſentare, &c. ad Eccleſiam, &c.* for the word *Eccleſia* is always intended a Parſonage. And if it be a Vicarage, then the Writ is; *quòd permittat ipſum preſentar: ad Vicam'.* And if it be a Prebend then *ad Prebendam*; and if a Chappel *ad Capellam*; and ſo he ought to name the Advowſon as it is, &c. 8 H. 6. 22.

[33.] A man ſhall not have a *Quare impedit de Advocat. mediatis, nec de mediet. Advocationis, &c.* And if one man B hath the Nomination unto an Advowſon, and another hath the Preſentation, if he name his Clerk, and he who hath the Preſentation, preſent another Clerk; he which hath the Nomination ſhall have a *Quare Impedit*, and the Writ ſhall be, *quod permittat ipſum præſentare, &c.* and in his Count he ſhall ſet forth the ſpecial matter, and it ſhall be good.

And ſo if a man hath a Chantry, which is a Donative C by Letters Patents, and he give the ſame unto a Clerk, who is diſturbed by another, or another doth preſent to his Chantery,

Chantery, or giveth the ſame by Letters Patents; he which hath Right ſhall have a *Quare Impedit* of that Donative; and the Writ ſhall be, *quòd permittat ipſum præſentare*, &c. *ad Cantariam*, &c. and in the Count he ſhall ſet forth the ſpecial matter. 17 E.3.11

D And if a Biſhop be diſturbed to preſent where he ought to make Collation, the Writ ſhall be, *quòd permittat ipſum preſentare*, &c. and he ſhall count upon the Collation.

E And ſo if the King be diſturbed to collate by his Letters Patents unto his free Chappel, he ſhall have a *Quare impedit*, and the Writ ſhall be, *quòd permittat ipſum præſentare*, &c. *ad Prebendam* in his free Chappel, &c.

F And a *Quare Impedit* lyeth of a Priory, or of an Abbey; and the Writ ſhall be, *quòd permittat preſentare ipſum ad Prioratum ſeu Abbatiam*, &c. See the Book of *Entries* 59. 14 H.4. 36.b

G And there is another form of Writ, *quòd permittat ipſum præſentare ad Eccleſiam Domûs* S. Martini Briſtol', *quæ vacat*, &c. and ſo of an Hoſpital, and the like.

H And a man ſhall not have a *Quare Impedit* if he cannot alledge a Preſentment in himſelf or in his Anceſtors, or in another perſon, from whom he claimeth the Advowſon, and that in his Count, if it be not in ſpecial caſes: as if a man at this day erect a Church Parochial by a Licenſe of the King, or other Chantery, which ſhall be preſentable, &c. if he be diſturbed to Preſent to the ſame, he ſhall have a *Quare Impedit*, without alledging of Preſentment in any perſon, and ſhall count upon the ſpecial matter. 21 E.4.2.3. 16 H.7.8. Kebbs 22.

I And if a man doth recover an Advowſon againſt another in a Writ of Right, when the Church voideth he ſhall preſent, and if he be diſturbed, he ſhall have a *Quare Impedit*, and alledge the Preſentment in him againſt whom he recovered, without alledging any other Preſentment. And a man ſhall have a *Quare Impedit* and alledge a Preſentment by his Proctor, and it ſhall be good, without alledging a Preſentment in himſelf: *quod vid.* 17 E.3.

K And if an Abbey hath been Parſon *imperſonee* time out of mind, and afterwards the Abbey is diſturbed, he of whom the Advowſon is holden ſhall preſent, and if diſturbed, ſhall have a *Quare Impedit*, without alledging of any Preſentment in the Count, but ſhall ſhew the ſpecial matter. C.2.Part 47 b.ac.

L If Coparceners make partition to preſent by turns, and ſo do, and afterwards the younger Siſter die, her Heir within age, and in Ward to the King, and afterwards the Church void two or three times during the Nonage of the Heir, who

who is the King's Ward; the King shall present, and if he be
21 B.3.Br. *Quare Impedit* 73. disturbed, he shall have a *Quare impedit* alone, as it appeareth *M.*22 *E.*4. But, saving the opinion of the Book, I conceive the Law to be otherwise, because the Inheritance of the Presentment is several, &c. And if two Sisters be, and M have an Advowson which becometh void, the eldest Sister shall have the first Presentment; and so the Husband of the eldest Sister (if he be Tenant by the Courtesie of the Advowson) shall have the first Presentment, and the Tenant in Dower shall have but the third Presentment, &c.

16 H.7.8. If the King have an Advowson in Fee, which voids, and N during the Avoidance the King granteth the Advowson in Fee, the King shall not present to this Avoidance: but if the King have an Advowson by reason of the Temporalties of a Bishop, and during the Avoidance the King restore the Bishop the Temporalties, yet he shall present unto the Advowson and not the Bishop for this Avoidance.

If the Heir sue his Livery and hath it, yet the King shall O present unto an Advowson which became void during the time that the Advowson and Land were in the King's hands.

If a man be seised of an Advowson in gross or in Fee ap- P pendant unto a Mannor, and the Advowson void, and he
34 H.8.Dier 4 C.3. part 3. dyeth, his Executor shall present and not the Heir, because it was a Chattel vested and severed from the Mannor. And if Q a man be disseised of a Mannor unto which an Advowson is appendant, and the Advowson become void, the Disseisee
50 E.3.26. ac'. Vid. after 34.K. may present and have a *Quare Impedit*, although he hath not entred into the Mannor. But if the Bishop die, and the R Advowson happen void before his death, the King shall present unto the same by reason of the Temporalties, and not the Bishop's Executors.

2 H.4.19. So if a man have a Mannor unto which an Advowson is S
40 E.3.14. after 34. K. 143.E. appendant in Fee, and the Church void in the Fathers time, and he die, and his Heir in Ward to the King, the King shall have the Presentment.

Gardian in Socage of a Mannor unto which an Advowson T is appendant, and the Church void, the Heir shall present, and not the Gardian, because he cannot account for the same.

If the King grant unto an Abbot and his Auncestors that V the Monk shall have the Temporalties during the Vacation; now if the Advowson happen void during the Vacation, the Monks shall present to the same. *M.*30 *E.*3.

The Presentation to the Vicarage doth of common right X appertain unto the Parson; but he may grant the same to another by assent of the Patron and Ordinary.

The

The Heir in tail ſhall not have a Preſentment fallen in the life of the Tenant in tail, but the Executor of Tenant in [34]
B tail. So the Termer ſhall have the Preſentment which happeneth during the Term, although he hath not preſented during the Term to the Advowſon, &c.

C The King may repeal his Nominnation or Preſentation, but 7 H. 4. 32. Dier 260.
D a common perſon cannot ſo do. And the King ſhall have a 25 E. 3. 47. *Robert de Kelſey* Caſe.
Writ unto the Biſhop to induct one into a Prebend which the King hath given unto him; and to give him a ſeat in the Quire, and a place in the Chapter houſe.

E And a man ſhall have a *Quare Impedit* of an Hermitage, and a Writ to put him into Corporal poſſeſſion.

F If the King recover by *Quare Impedit*, and afterwards ratifie the eſtate of the Incumbent; yet at the next Avoidance the King ſhall preſent, becauſe his Recovery and Judgement for him was not executed. *T. 9 E. 3.* In a free Chappel of the King, where the Dean ought to give the Prebends, if he do not collate within ſix Months unto them, then the King ſhall preſent by Lapſe to them as Ordinary.

G If an Advowſon be void by ſix months, at which time the King is ſeiſed of the Temporalties of the Biſhoprick, the King ſhall preſent to this Advowſon, as the Biſhop ſhould do; and the King ſhall have a *Quare Impedit* of the Sub-Deaconry of *York* which voided when the Temporalties of the Archbiſhoprick were in the Kings hands; and the Writ ſhall be, *quòd permittat eum præſentare:* and yet the King ſhall give this Sub-Deaconry by his Letters Patents.

H Where Partition is made betwixt Coparceners by Licenſe 31 E. 3. of the King of an Advowſon in a Court of Record, as in the Common Pleas, and afterwards the Coparcener who hath the next turn dyeth, her Heir within age and in Ward to the King, and the Church void; the King ſhall have a *Scire facias* againſt the other Coparcener, &c. upon that Partition, and yet he was a ſtranger to the Partition.

I If two Coparceners make Partition to preſent by turns, 6 E. 3. *Qu. Imp.* 39. although that one of the Coparceners do afterwards uſurp upon the other Coparcener, and preſents in her turn, that Preſentment ſhall not put her out of poſſeſſion, but ſhe ſhall have her turn when it falls again, and ſhall have a *Quare impedit*, or a *Scire facias* upon the Compoſition, if it be upon Record, if ſhe be diſturbed for to preſent, &c.

K If a Biſhop make a Collation, and before Induction or 50 E. 3. 26. Inſtallation dyeth, and the King ſeiſeth the Temporalties; 38 E. 3. 4. he ſhall have this Preſentment, becauſe that the Church is not full againſt the King, until the Parſon or Prebend be inſtalled or inducted.

If

24 E.3.33. If a Parſon hath a Parſonage, and afterwards doth take another Benefice without Diſpenſation; now the firſt Benefice is void, and the Patron thereof may preſent, for this Avoidance is called Ceſſion. L

Br. Preſentment al Eglis 46. If in the time of Vacation of an Abbey or Priory, a Church happen void, which is of the Patronage of the Abbot or Prior, and a ſtranger doth uſurp and preſent thereunto; this Uſurpation ſhall not prejudice the Succeſſor; but at the next Avoidance of the ſaid Church he may preſent, and have a *Quare Impedit*; But otherwiſe it is if an Uſurpation ſhall be had in the time of his Predeceſſor, for that ſhall put the Succeſſor out of poſſeſſion, if the ſix months be paſt. M

If a Vicarage happen void, and before the Parſon preſent, he is made a Biſhop, &c. yet he ſhall preſent unto this Vicarage, becauſe it was a Chattel veſted in him. N

The Founder of a Priory ſhall have a *Quare impedit* againſt the Subprior and the Covent, if they diſturb him to preſent to an Advowſon which belongeth to the Houſe, if it void during the Vacation, where the Founder ought to have the Temporalties during the Vacation. *P.9.E.3.* O

If a man traverſe an Office found of a Mannor unto which an Advowſon is appendant, and upon the Traverſe the King leaſeth the Mannor unto him who tendred the Traverſe, without mentioning the Advowſon, and afterwards the Church void, he who tendred the Traverſe ſhall have the preſentment, if the Traverſe be found for him. P.

If a Feme be aſſigned the third part of a Mannor unto which an Advowſon is appendant in Dower, ſhe ſhall have the third preſentment. Q

14 H.6.24. *Newton*, Feme is diſturbed and taketh Huſband, the Church void, the Husband preſents, the ſame ſhall veſt the right in the Wife. If the Patron be Out-lawed in Treſpaſs, and the Church void, the King ſhall preſent, becauſe of the Out-lawry. R

If a Feme purchaſe an Advowſon, and take a Husband, and the Church void, and a ſtranger doth preſent, and the Husband ſuffer an Uſurpation, &c. by this Uſurpation the Wife ſhall be out of poſſeſſion, after the ſix Months paſt, and ſhe ſhall be put to her Writ of right of Advowſon, if ſhe have preſented before; and if ſhe have not preſented, ſhe is without recovery: But otherwiſe is it if the Feme ſhall have an Advowſon by deſcent, or by courſe of inheritance. S

If an Infant or a Feme Covert do not preſent within ſix months, the Biſhop may preſent for Lapſe. T

One Joyntenant, or Tenant in common, ſhall not have a *Quare impedit* for the Advowſon which they have in common V

mon, or in Joynture, if one of them preſent ſolely againſt his Companion. But if two Coparceners cannot agree in the preſentment, the eldeſt Siſter ſhall have the firſt preſentment, and he who hath her Eſtate ſhall have the firſt Preſentment; and if he be diſturbed by the other Coparcener, ſhe or he who hath her Eſtate ſhall have a *Quare impedit* againſt the other Siſter; and the Coparceners and thoſe who have their Eſtates ſhall preſent as Coparceners, ought to do, *ſcil.* the eldeſt firſt, and then the middlemoſt and then the third, and then the fourth, and ſo as they ſhall be of age, &c.

35 H.8.Dy. 55. Advowſon deſcends to two Coparceners, one of full age, and the other within age, the Gardian marrieth

the eldeſt, the Church void, he preſents in both their names, the youngeſt cometh of age. Some are of opinion, that if they do not agree the eldeſt ſhall preſent, and it ſhall be her turn: Others contrary. *Quare.*

X If an Infant have a Mannor unto which an Advowſon is appendant, and ſuffereth an Uſurpation when the Church becometh void, and afterward at full age grants the Mannor in Fee, and afterwards the Church become void; the Infant ſhall preſent, and not the Feoffee of the Mannor, for the Advowſon was ſevered by the Uſurpation; and yet the Infant may preſent to the ſame [35]

A If the Kings Tenant hath title to preſent unto an Advowſon which is void, and the ſix months paſs; and afterwards the Kings Tenant dyeth before the Biſhop preſenteth for Lapſe, his Heir within age, and in Ward to the King, the Biſhop ſhall not preſent for Lapſe, but the King ſhall have this preſentment, by reaſon of the Wardſhip. *P.* 18. *E.* 3.

B If Tenant in tail of a Mannor, unto which an Advowſon is appendant, diſcontinue the Mannor in Fee with the Advowſon, and after the Diſcontinuer granteth the Advowſon unto another in Fee, and afterwards doth re-infeoff the Tenant in tail of the Mannor, who dyeth ſeiſed of the Mannor; his Heir ſhall preſent unto the Advowſon when it ſhall happen void: and if he be diſturbed, he ſhall have a *Quare impedit*, becauſe he is remitted unto the Mannor, and hath not remedy to come to the Advowſon.

C The Defendant in a *Quare impedit* may ſue a *Quare impedit* againſt the Plantiff, if his Clerk be not admitted nor inſtituted. And if the Plantiffs Clerk be inſtituted and inducted pendant the Writ, it ſhall not abate the Plantiffs Writ; but in that Caſe if the Defendant recover againſt the Plantiff, he ſhall avoid the Plantiffs Clerk; and ſo if the Defendants Clerk be admitted pendant the Writ againſt him, if the Plantiff recover, he ſhall avoid the Defendants Clerk:

Clerk: But if the Clerk of the Defendant were admitted and inſtituted at the time of the purchaſe of the Writ, and the Plantiff purchaſe the Writ only againſt the Patron, not naming the Incumbent; although the Plaintiff recover, he ſhall not avoid the Defendants Clerk, becauſe he might have named him in the *Quare impedit.*

If a Stranger do preſent unto an Abbey or Priory which D
is eligible by the Covent, and his Clerk be inſtituted and inducted; *Quære*, how this wrong may be after redreſſed and reformed.

20 Eliz. 11. *Hart's* Caſe. he ought to be inducted.

If a man have a Chappel or Chauntry which is donative E
by Letters Patents, and he once preſent unto the Ordinary his Clerk to the Chauncery, he ſhall never after collate, but ought to preſent unto the Biſhop; and if he do not preſent within ſix months, the Ordinary ſhall have advantage of the Lapſe.

A Preſentment made by a Stranger unto an Advowſon F
which is appropriated unto an Abbey, be the Preſentment in the time of Vacation, or in the time of the Abbot, is void, although that the Clerk be inſtituted and inducted: but if the Abbot himſelf preſent unto the Biſhop his Clerk to an Advowſon which is appropriate to his Houſe, this Preſentment doth diſappropriate the Advowſon, and make it preſentable after; and if he do not preſent whithin ſix months after every Avoidance, the Biſhop ſhall preſent for Lapſe. The Biſhop ought to preſent his Clerk for whom it G
1 H. 7. 9. is firſt found by a *jure Patronatus.*

12 & 13 Eli. Dy. 293. a. 237. The Biſhop ſhall not have the advantage to preſent by H
Lapſe, where the Church doth become void by Reſignation or Deprivation, without giving notice thereof to the Patron.

Dr. & Stud. 117. 12 El. Dyer 293. Where the Biſhop doth refuſe the Clerk of the Patron I
for non-ability, or for crime, he ought for to give notice thereof to the Patron, otherwiſe he ſhall not preſent for Lapſe; but after the ſix months paſt, the Patron ſhall have a Writ to the Biſhop, if the Church do remain void, and the Biſhop hath not collated thereunto.

The Chancellor of *England* ſhall preſent to all the Kings K
Churches which are under the ſum of twenty Marks by the year, which are in the Kings gift, and in the right of the Crown: But if the King hath them by any other Title, then the Chancellor ſhall not preſent unto them.

C. 10 Part, 134. The death of one Plaintiff, nor the Non ſuit of one Plain- L
tiff, ſhall not abate the Writ, but he ſhall be ſevered.

38 E. 3. 36. Where an Infant hath an Advowſon by deſcent, and the M
Church

Church voideth, and he who hath Title paramount doth uſurp, and preſent unto the ſame Church, and the ſix months do paſs; he is remitted by this Uſurpation, and the Infant out of poſſeſſion, and without remedy by that Uſurpation.

N If a man hath an Advowſon, and the Church doth become void, and two ſtrangers do ſeverally preſent their Clerks to the Biſhop to that Advowſon; the Patron ſhall have divers *Quare Impedits* againſt them, if he will, and ſhall have ſeveral Judgments, and ſhall recover ſeveral damages for their ſeveral Preſentments and wrongs done.

O. If a man maketh another his Proctor, to preſent unto all his Advowſons, and to do ſeveral things for him; if the Proctor preſent, as Proctor unto him, unto an Advowſon unto which he hath right to preſent in his own right, that Preſentment ſhall put him out of poſſeſſion of the Advowſon, and ſhall give the poſſeſſion to the other. 17 E.3.60. Fitz. Quare imp. 68.

P In a *Quare Impedit* for the King, although the Defendant hath a Writ unto the Biſhop againſt the King, the King may have a new *Quare impedit* againſt him of the ſame Avoidance, and make other Title.

Q If Prior and Covent ought to chuſe the Abbot, and name him to the Patron, and he to preſent him to the Biſhop, and they chuſe one for Abbot, and name him to the Patron, and the Patron doth preſent another to the Biſhop; they may ſue in the Spiritual Court for remedy, as it is ſaid, *H.* 31 *E.* 3. *Tamen quære*; for it ſeemeth they are enabled to ſue at the Common Law, as well as they are enabled to chuſe and name the Abbot. As the Prior of *Weſtminſter* and the Covent hath power to ſue their Abbot for an Advowſon, *M.* 20. *E.* 3. 40 E.3.28. per Fortescue

If the Diſturber preſent two or three times within the ſix months, yet a *Quare impedit* lieth againſt the Diſturber upon the firſt preſentment, if he purchaſe the Writ within the ſix months.

A Where a man doth recover in a Writ of Right of Advowſon, he ſhall preſent at the next Avoidance, and ſhall have a *Quare impedit*, without alledging any Preſentment in himſelf or his Anceſtors, but ſhall declare upon the Record, or may have a *Scire facias* upon the Recovery. And ſo may his Heir have a *Scire facias* upon that Recovery againſt the Heir of the other party, at the next Avoidance after the Recovery; but not after, as it ſeemeth. [36] 16 H.7.8. per Keble.

B If a man recover in a *Quare impedit*, he ſhall have a *Scire facias* againſt the Patron and the Incumbent who made Default, if he will ſue Execution of this Recovery. 15 E.2.201. 174.

If

If Coparceners make Partition in the Chancery or in the Common Pleas, to present by turns, and afterwards a stranger doth usurp in their several turns; yet after when their turns come, every of them may have a *Scire facias* upon this partition against the stranger when his turn cometh, to shew wherefore he should not present, notwithstanding the Usurpation aforesaid. But otherwise it seemeth it is if the Partition be of record, then they shall be put to their Writ of Right by reason of this Usurpation. C

16 H.7.2, &c.

If Coparceners make Composition to present by turns, and a stranger doth usurp, and presenteth in the turn of one of them; yet if they will they may joyn in a *Quare impedit* against the stranger, notwithstanding the Composition. And after Composition to Present by turns, if they do present in common, they may well so do. But it seemeth by that, that the Composition is waved; for if Coparceners (where one is within age) make Composition to present by turns, and at full age they present contrary to this Partition, these Presentments shall avoid the Partition made before. D

If the eldest son by the first *Venter* present, and dieth without Heir, and afterwards the Church becomes void, the younger by the second *Venter* shall not present, nor have this Advowson. But *Devon* saith, If a man hath two Daughters by divers *Venters*, and they enter and make Partition to present by turns, and one dieth without Heir, the other Sister shall be her Heir: *quod fuit concessum.* But after the Partition, if one Sister hath presented, and afterwards dieth without Heir, it seemeth her Sister of the half bloud shall not be Heir unto her. E

If a man be disseised of a Mannor unto which an Advowson is appendant, and the Disseisor suffer an Usurpation by a stranger unto the Advowson, and afterwards the Disseisee doth re-enter into the Mannor; he shall present unto the Advowson when it doth become void, notwithstanding such Usurpation. F

Spoliation.

There is a manner of Suit called *Spoliation*, for the Fruits of a Church, or for the Church it self, which is to be sued in the Spiritual Court, and not in the Temporal Court; and therefore there is no Writ thereof in the Register. But it is good to be known what person shall have that Suit, and against what person it will lie and for what thing he shall sue, and when he shall sue, and in what Court. G

Spoliation properly lieth for an Incumbent against another Incum- H

Incumbent, where the right of the Patronage doth not come in debate; As if a Parſon be created Biſhop, and hath a Diſpenſation to hold his Rectory, and afterwards the Patron doth preſent another Incumbent, who is inſtituted and inducted; now the Biſhop ſhall have a *Spoliation* againſt that Incumbent in the Spiritual Court, becauſe he claimeth by one Patron, and the right of the Patronage doth not come in debate. 31 H.6.10. Forteſcue. 26 H.8.3.

And ſo if a Parſon do accept of another Benefice, for which the Patron preſents another Clerk, who is inſtituted and inducted; now one of them may ſue a *Spoliation* againſt the other, and then it ſhall come in debate whether he hath Plurality or not. But if a Patron do preſent a Clerk unto an Advowſon, who is inſtituted and inducted, and afterwards another man doth preſent another Clerk to the ſame Advowſon, who is alſo inſtituted and inducted; there one of them ſhall not have a *Spoliation* againſt the other, if he diſturb him of the Church, or to take the fruits thereof, becauſe the right of the Patronage doth come in debate in the Spiritual Court, which of the Patrons hath right for to preſent: and therefore in that Caſe, if one of them ſue a Spoliation againſt the other, he ſhall have a Prohibition unto the Spiritual Court, and no Conſultation ſhall be granted for the cauſe before ſaid. See after 51.1.

I And if one Clerk, without any Preſentation, Inſtitution, or Induction, do caſt another Parſon out of his Rectory, and taketh the profits thereof, the Parſon ſhall not have a *Spoliation* againſt him, but an Action of Treſpaſs; or an Aſſiſe of *Novel diſſeiſin*; for *Spoliation* doth not lie, if not againſt him who cometh to the poſſeſſion of a Benefice, or unto the fruits thereof, by the courſe of the Spiritual Law, *ſcil.* by Inſtitution, &c. ſo that he have colour to have it, and to be Parſon by the Spiritual Law. 18 H.6.19. Markham. 26 H.8.3. 22 H.6.27.

K So if a Prebend happen void, and the Biſhop collate thereunto, and before Induction the Biſhop die, and the Temporalties come unto the King, and afterwards he is inducted, and afterwards the King giveth the ſame by his Letters Patents unto another Clerk, who is inſtituted and inducted; the firſt Clerk ſhall have a *Spoliation* in the Spiritual Court againſt the Preſentee of the King, becauſe the King ought to have removed him by *Quare Impedit*, and not to have collated as he did. And there the Patronage doth come in debate.

If an Abbot have a Mannor unto which an Advowſon is appendant in Fee, and he doth appropriate the Advowſon [37.]

M. 44 E. 3. 33. Quare imp. 4. to him and his Succeſſors, and afterwards leaſeth the Manor for one thouſand years, and alſo the Advowſon, and the Leſſee makes an Union of the Parſonage and the Vicarage, and preſents the Vicar unto the Ordinary as Parſon, &c. by reaſon whereof the Abbot ſueth a *Spoliation* againſt the Vicar, and the Vicar ſueth a Prohibition; the Abbot ſhall not have a Conſultation upon the matter ſhewed. By which it appeareth, that a *Spoliation* doth not lie for the Abbot in this caſe; for that the right of the Patronage doth not come in debate.

A

21 H. 6. 19, 20. And ſo if an Abbot be Parſon impariſonee, and a ſtranger preſent his Clerk to that Advowſon, who is inſtituted and inducted; the Abbot ſhall not have a *Spolation* againſt the Clerk, but an Action of Treſpaſs or Aſſiſe, if he be ouſted; becauſe the Right of the Parſonage is to be tried.

B

And if a Clerk obtain a Benefice by proviſion, for which cauſe the King is to have the Preſentment for that time, becauſe the very Patron did not preſent within the time limited him by the Statute of 25 *E.* 3. and the King preſents to the Church his Clerk to the Ordinary, who is inſtituted, and before Induction takes the profits; he who is in by proviſion ſhall not have a *Spoliation* againſt him, becauſe he doth not come to the poſſeſſion of the Church by the Spiritual Law, but as an Intruder and Treſpaſſor. But if the Preſentee of the King were inducted, then there is no remedy for him who hath the Benefice by proviſion.

C

A Clerk had a Collation by the King unto a Chappel, and was put into poſſeſſion by the Sheriff, and afterwards the Clerk was ouſted by a Prior, &c. in that caſe he ſhall not have a *Spoliation*, but an Aſſiſe or Treſpaſs, &c.

D

But it appeareth by the Regiſter, that one Parſon ſhall have a *Spoliation* againſt another Parſon, which have diver Patrons, &c. if he be ſpoiled of any Tithes or profits appertaining to his Church, which do not amount to the fourth part of the value of the Church, as before is ſaid. But if they do amount unto the fourth part of the Church, then one Parſon ſhall not have a *Spoliation* againſt another Parſon, if they claim not of one Patronage, ſo that the Title of the Patronage doth not come in debate; and then he ſhall have a *Spoliation*; and if the other ſue a Prohibition, &c. he ſhall have a Conſultation.

E

N.

Ne admittas.

F THis Writ of *Ne admittas* lyeth for the Plaintiff in a *Quare Impedit*: and the ſame is where one hath an Action depending in the Common Pleas of *Darrein Preſentment*, or of *Quare Impedit*, and he ſuppoſeth that the Biſhop will admit the Clerk of the Defendant pendant the Plea betwixt them; and he may ſue this Writ directed to the Biſhop. And this Writ ought to be ſued within the ſix Months after the Avoidance; for after the ſix Months he ſhall not have this Writ, becauſe that then the Biſhop may preſent for Lapſe; and therefore it is in vain then for to ſue this Writ, becauſe that the Title to preſent is then devolved unto the Biſhop: but the King may ſue this Writ after the ſix Months, where he hath a *Quare Impedit* depending, or Aſſiſe *de Darrein Preſentment*, becauſe that *Nullum tempus occurrit Regi*.

Nota. In *Marrow's* reading it is holden that the ſix Months ſhall not be accounted by 28. days, but according to the Calender-Months.

But there is a Rule in the Regiſter thus, *Notandum eſt, quando Rex præſentat ut in jure Coronæ, tunc incurrit ei tempus.* But that is not Law at this day.

And the Writ of *Ne admittas* for the King is ſuch:

G *Rex venerabili in Chriſto Patri W. eâdem gratiâ* Winton. *Epiſc', ſalutem. Prohibemus vobis, nè admittatis Perſonam ad Eccleſiam de Leye vacet, ut dicitur, et de cujus Advocation. contentio mota eſt in Curia noſtra inter nos et A*: Or thus, *inter A. et B. donec diſcuſſum fuerit in eadem Curia, utrum ad nos an ad præf. A*: Or thus, *in eadem Curia ad quem eorum pertinet ejuſdem Eccleſiæ Advocat'*: Or thus, *inter nos, ratione Abbatiæ de S. vacantis, et in manu noſtra exiſtentis, et* H. *Linc. Epiſc', donec diſcuſſum fuerit in eadem Curia noſtra, utrum ad noſtram vel Vacationis præd', an ad præfat. Epiſc. pertineat ejuſdem Eccleſiæ Advocat'.*

H And it ſeemeth that the Defendant may ſue this Writ as well as the Plaintiff, if the Defendant do ſuppoſe that the Biſhop will admit the Clerk of the Plaintiff pendant the Writ. And this Writ of *Ne admittas* doth not lie, if the Plea be not depending in the Kings Court by *Quare Impedit* or Aſſiſe of *Darrein Preſentment*. And therefore there is a Writ in the Regiſter directed unto the chief Juſtice of the Common Pleas, to certifie the King in the Chancery, if there be any Pleas depending before him and his Companions by Writ betwixt ſuch and ſuch perſons, &c. And therefore it ſeemeth the Writ of *Ne admittas* ſhall not be granted, before the King be certified in the Chancery, that ſuch Pleas

21 H. 6. 41.

2 E. 4. 11.

of *Quare Impedit* or *Darrein Preſentment* be there depending in the Common Pleas. But yet the Writ of *Ne admittas* may be granted out of the Chancery, directed unto the Biſhop, that he do not admit, &c. before the King be certified in the Chancery, that ſuch Plea of *Quare Impedit* or *Darrein Preſentment* is depending in the Common Pleas, then the party grieved may require the chief Juſtice to certifie the King in his Chancery, that no ſuch Plea is depending there, and thereupon the party grieved ſhall have ſuch Writ:

[38.] *Rex venerabili in Chriſto Patri &c. Licèt nos per Breve noſtrum vobis prohibuimus, nè admitteretis Perſonam ad Eccleſiam de* L. [ut in Brevi de nè admittas] *quia tamen per certificationem dilect', &c. L. de S. nobis conſtat, quòd nullum placitum pendet in Curia præd. earum ipſo & ſocio ſuis Juſticiis noſtris de Banco inter nos & præf. W. de Advocatione præd', Vobis mandamus, quòd id quod ad offic. veſtrum in hac parte noverit pertinere, liberè exerceatis, Prohibitione noſtrâ præd. non obſtante. Teſte, &c.*

And when the Biſhop himſelf is party and diſturber, A then the form of the Writ of *Nè admittas* is as aforeſaid; *Prohibemus vobis, nè admittatis.* Yet the form of the Writ uſed to be, *Prohibemus vobis, nè conferatis Clericum Eccleſiæ, &c. quæ vacat, &c.*

Breve Epiſcopo ad admittendum Clericum.

7 H. 2. 32. 2 H. 4. 22. A Writ ſhall iſſue to the Metropolitan, if the Biſh. be party. *Quære*, for the Biſh. did diſclaim as Patron in 2 H. 4.

IF a man do recover his Preſentation in the Common Pleas B againſt the Biſhop, then he may have a Writ to the ſame Biſhop to admit his Clerk, or unto the Metropolitan; and the Writ ſhall be ſuch:

Rex venerabili in Chriſto Patri &c. Cum Prior de I. &c. *in Curia noſtra recuperaſſet verſus nos Præſentationem ſuam ad Vicariam de* W. *Vobis mandamus, quòd ad præſentac. ipſius Prioris ad præd. Vicariam idoneam Perſonam admittatis, &c.*

And if a man recover againſt another than the Biſhop, C then the Writ which ſhall be made to the Biſhop, ſhall be thus:

Rex, &c. Cum Prior, &c. in Curia noſtra, &c. recuperaſſet verſus I. P, &c. *Vobis mandamus, quòd non obſtante Reclam. præd.* I. P. *ad Præſentac. præd. Prioris, &c. idoneam Perſonam admittatis, &c.* And upon that he ſhall have an *Alias* and a *Pluries*, if the Biſhop do not execute the Writ, and an Attachment againſt the Biſhop, if need be.

In a *Quare Impedit* the Defendant diſclaims, there the Plaintiff ſhall have a Writ to the Biſh. *contr.* in diſclaimer in a Writ of Right of Advowſon. 6. E. 3. 7. *Error* 78. The reaſon is, becauſe he cannot remove his Clerk after the ſix Months paſt.

&c.

D But if the King do recover in the Common Pleas any Prebendary, or Sub-deanry, or Dignity againſt the Biſhop, and giveth the ſame by his Letters Patents unto another Clerk; the Clerk ſhall ſhew the Letters Patents in the Common Pleas, and thereupon ſhall have a Writ unto the Biſhop to admit him, and to induct him. And if the Clerk die before he be admitted and inducted, and the King giveth the ſame by other Letters Patents unto another Clerk; that Clerk ſhall have a Writ out of the Chancery, directed unto the Juſtices of the Common Pleas, reciting the Recovery, and how that the other Clerk died before he was admitted, and how that he hath granted the ſame to this Clerk by his Letters Patents, commanding the Juſtices, that they ſend another Writ to the Biſhop, that he admit this Clerk, notwithſtanding the King's Collation before made unto the other Clerk.

E In a *Quare Impedit* betwixt two Strangers, if there doth appear to the Court a Title for the King, they ſhall award a Writ unto the Biſhop for the King. 11 H. 4. 71. Hank. and *Hill.*

F If a man do recover an Advowſon, and the ſix Months paſs, yet if the Church be void, the Patron may pray a Writ unto the Biſhop, and ſhall have it; and if the Church be void when the Writ cometh to the Biſhop, the Biſhop is bound to admit his Clerk. And in reaſon the ſame Law is, if the Patron after the ſix Months preſent unto the Biſhop, if the Church be then void, the Biſhop is bound to admit his Clerk. 21 E. 3. 14 H. 4. 11. Hank. *ford.* 31 H. 6. 13. *Cont.* where there is fault in the Count.

G And a *Quare Impedit* ſhall be ſued againſt a Sub-Prior, &c. for Diſturbance of the Patron. *Trinit.* 31 *E.* 1.

H Where the Writ abateth for form or falſe Latin, the Defendant ſhall not have a Writ to the Biſhop. If the Patron who is Defendant make Default at the Diſtreſs, and the Incumbent abate the Writ by Plea, a Writ unto the Biſhop ſhall not be awarded for the Patron, becauſe he made default. 7 H. 6. 15. per Curiam. *E contra*, if the Patron had appeared, and the Incumbent made Default, in 7 H. 6. 37. 14 H. 4. 16. upon Pleas of the Incumbent, a Writ awarded to the Biſhop.

I In a *Quare Impedit* againſt the Biſhop and others, all made Default but the Biſhop, and the Plaintiff had not a Writ unto the Biſhop againſt the others, until he had counted againſt the Biſhop. 10 H. 6. 4.

33 H. 6.1. 22 E.6.44. 2 H.7.13. 31 H.6.14. 38 H.6.14. 34 H. 6. 44. 11 H. 6.1. Note: And there the Writ was brought by two Coparceners against the third, and others.

If the Plaintiff be Non-suit, the Defendant shall not have K a Writ unto the Bishop, before he hath made Title to the Advowson.

Writ. 9 H.6. 16. per Curiam; the Plaintiff shall have a Writ to the Bishop upon insufficient Plea.

Where the Defendant claimeth the Advowson as Par- L son impersonee, although it be found for the Defendant, he shall not have a Writ to the Bishop.

Where the Writ abateth for *Misnosm'*, or for insufficien- M cy, the Defendant shall not have a Writ to the Bishop.

If the Defendant do not appear at the Distress returned a- N gainst him, the Plaintiff shall have a Writ to the Bishop, without making Title.

21 H.6.36. 33 H.6.1.

If the Sheriff return upon a *Quare impedit, quòd querens* O *non invenit Pleg'*, then the Plaintiff may find pledges in the Common Pleas, and shall have a new *Quare Impedit* in the Common Pleas; and if the Sheriff return upon that Writ *tardè*, and the Defendant appear, and the Plaintiff be called and appeareth not, the Defendant shall not have a Writ to the Bishop, because that no Writ is served against the Defendant.

Where the Plaintiff recovereth by Verdict in a *Quare* P *Impedit*, and it is found by the same Verdict that the six Months are past, and that the Metropolitan hath presented, whereas the Ordinary ought to have presented, &c. and that the year is now past, &c. yet the Plaintiff shall have a Writ to the Bishop.

7 H.4.17.

If a man recover against a Bishop, he may have a Writ Q to the same Bishop, or unto his Vicar-general, if he be out of the Realm, or unto the Metropolitan.

A man sued divers *Quare Impedits* against one Bishop, and R he was Non-suit in all but one Writ; the Defendant had not a Writ to the Bishop until that Writ was determined.

2 H.4.1.

In a *Quare Impedit* the Defendant pleaded to issue, and S after made default, and a Writ was awarded unto the Bishop for the Plaintiff.

At the *Distringas* returned against the Defendant, he T comes, and hath day by the prayer of the parties, and afterward makes Default; the Plaintiff shall not have a Writ to the Bishop, but a *new Distringas*.

[39]

In a *Quare Impedit* the Defendant maketh Title for him- U self and others, and afterwards the Plaintiff is Non-suit; a Writ to the Bishop shall be awarded for the Defendant only, and not for the others.

B As the Diſtreſs returned againſt two, one appeareth, and the other maketh Default; the Plaintiff ſhall have a Writ to the Biſhop againſt him who made Default; and yet it may be that the other Defendant may bar the Plaintiff; and it is ſo uſed at this day: but the contrary was adjudged. *H.* 7. *E.* 3. for the cauſe before ſaid. 14 H. 7. 19. & 7 H. 6. 35.

C In a *Darrein Preſentment* betwixt two Strangers, the Aſſiſe found a Title for another Stranger; who was not party to the Writ; he ſhall have a Writ awarded to the Biſhop for him, although he were not party to the Writ, becauſe that the Writ is, *Quis advocatus ult. præſentaverit*, &c.

D Where a man hath a *Quare Impedit* againſt one, and the Defendant hath a *Darrein Preſentment* againſt the Plaintiff, and recovereth in the *Darrein Preſentment*, and the Plaintiff is Non-ſuit in the *Quare Impedit*, the Defendant ſhall have two Judgments againſt the Plaintiff, to have a Writ unto the Biſhop in both Actions; and two Writs ſhall be awarded to enquire of the damages; but he ſhall not render double damages for one Diſturbance.

E When a man ſueth a *Quare Impedit* againſt another, and after pendant the Suit he ſueth *Nè admittas* to the Biſhop, &c. and afterwards they agree to preſent in common by turns to that Advowſon; then he ſhall have a ſpecial Writ out of the Chancery unto the Biſhop, to admit him who ought, by the Accord and Compoſition, to preſent at the firſt turn to that avoidance. But firſt the King ought to ſend a *Certiorari* unto the Juſtices of the Common Pleas, to certifie in the Chancery of the Accord there; and upon that Certificate the King ſhall ſend his Writ unto the Biſhop, to admit his Clerk who by the Accord ought to have the firſt Preſentment and turn. And the form of the Writ in the Regiſter is ſuch:

F *Rex venerabili, &c. Cum nuper vobis per Breve noſtrum prohibuerimus, nè admitteretis Perſonam, &c. ejuſdem tertiæ partis Advocat' ac poſtmodum, ad proſecutionem ipſorum E. & M. nobis ſuggerent, inter eos concordatum fuiſſe ſub hac forma, quòd præd. E. hâc vice præſentaret Clericum ſuum ad dict. tertiam partem, & prædict. M. in proxim. Vocation. ſequen. Clericum ſuum præſentabit, ſicut per quædam ſcripta indentata inter eos confecta, & ſigillis ſuis conſign', et coram nobis in Cancellaria noſtra oſtenſa, plenè liquet; ipſoſque penes vos proſecut. fuiſſe, petend. cum inſtantia ut Clericum ipſius E. hâc vice ad dictam tertiam partem admitteretis, juxta formam concordiæ prædict. Vos tamen, aſſerent manus veſtras prætextu Prohibitionis noſtræ prædict. ligatas, Clericum ipſius E. admittere recuſaſſe, et nobis ſupplicant',*

ſupplicans', ut ſibi, nè collatio tertiæ partis præd. ad vos per Lapſum temporis, quæ in proximo, ut dicitur, imminebit, hâc vice devolvatur, velimus de congruo oppoſitione remedii in hac parte facer. provideri; mandaverimus dilecto & fideli noſtro R. de N. quòd ipſe cognitionem quæ præfati E. & M. coram ipſo facere velint, utrum viz. ipſi ſuper jure Præſentandi ad tertiam partem concordati eſſent in forma præd', & ſi præd. M. vellet quòd Clericus per ipſum E. ad tund. 3. partem præſentatus hâc vice admitteret, ad eandem, reciperet, & ſi dicta Scripta eſſent Facta ipſorum E. & M. & vos indè in Cancellaria noſtra ſub ſigillo veſtro diſtinctè & aperte redderet certiores: Et quia præf. R. nos ad mandatum noſtrum certificavit, quòd Concord. eſt inter præf. E. & M. quòd præd. E. hâc inſtante Vacatione præſentabit Clericum ſuum ad dictam tertium partem, & præd. M. in proxim. Vacatione ſequen', & ſic præd. E. & M. & hæred. ſui ad tertium partem præd. alternatim imperpetuum præſentabunt, & quòd ad Conventionem illam firmiter obſervand. Scripta præd. inter partes præd. ſunt confecta: Vobis mandamus, quòd ideneam Perſonam ad præd. tertiam partem ad præſentat. præfat. E. hâc vice admittatis, & ulterius quod veſtro incumbit officio in hac parte (Prohibitione noſtrâ præd. non obſtante.) Teſte, &c.

By this Writ it ſeemeth a man ſhall have a *Quare Impedit quòd permittat ipſum præſentare ad tertiam partem Eccleſiæ*; G and it ſeemeth to ſtand with reaſon: for a Conſolidation may be made of three Advowſons, and every Patron to preſent by turn, and then every one hath right but to a third part.

Prohibition and Inhibition.

THere are divers manners of Prohibitions and Inhibitions; H and they may be directed as well unto the Temporal Court as unto the Spiritual Court. And one Writ in the Regiſter is, where a man ſueth a *Præcipe in capite* againſt another in the Common Pleas, of Lands or Tenements which are not holden of the King, but of another Lord; then the Lord of whom the Lands are ſo holden may ſue this Writ directed to the Juſtices of the Common Pleas, commanding them, that if it do appear unto them that the Lands are not holden of the King, &c. but immediately of another, that they do not meddle with the Conuſance of that Plea, but that they bid the party ſue his Writ of Right Patent, *ſi ſibi viderit expedire*. And in a Writ of Right, if the Tenant vouch a Foreiner to Warranty, the Tenant ſhall have a Writ of *Superſedeas* directed to the Bailies of the ſame Court, to ſurceaſe the Plea,

[40.]

until

until the Warranty be determined; and if the Bailies will not surcease for that Writ, then the Tenant shall have another Writ of Inhibition directed unto the Sheriff, that he go unto the said Court; and to inhibit the Bailies, that they do not proceed in the Plea until the Warranty be determined, &c. And if they will not surcease for that Writ, then the Tenant shall have Attachment against the Bailies, directed unto the Sheriff, returnable in the Common Pleas, or King's Bench.

A A Prohibition may be directed unto the Sheriff at the suit of the Tenant, that he do not hold Plea in a Writ of Right, unless Battel shall be thereupon waged, because that the Tenant hath put himself upon the grand Assise.

B And a man may have a Writ of Prohibition directed unto the Sheriff, to go unto the Lords Court, and to inhibit the Bailies, that they do not hold Plea in the Lords Court of a House, &c. *inter A. Petentem & B. Tenentem.* And he may have another Writ unto the Sheriff, to prohibit the Lord himself, that he do not hold the Plea, &c.

C And also the Tenant may have another Prohibition directed to the Sheriff, to prohibit the Bailies of the Bishoprick of the Hundred of *F.* that they do not hold Plea in the said Hundred *inter A. Pet. & B. Ten', de Consuetudinibus & servitiis quæ idem A. de eo exigit de liber. Tenem', quod de eo tenet in* L. *nisi Duellum inde vadiat. fuerit*; because the said *B* hath put himself upon the Grand Assise, &c. And if Tenant by Receit sue such a Prohibition, the Writ ought to make mention of the Receit.

D Where the Bishop holdeth Plea of an Advowson, or of the fourth part, or of the third part thereof, then the party shall have a Writ of Prohibition directed unto the Bishop himself, in this form:

Rex ven. in Christo Patri A. *eâdem gratiâ Episcopo* Winton', *& ejus Offic. ac eorum Commiss. salutem. Prohibemus vobis, ne ten. Placitum in Cur. Christianitat. de Advocat. Ecclesiæ de* N. *vel medietat'. vel tertiæ partu, vel quartæ partis Ecclesiæ de* N. *unde* S. *&* F. *querunt' quod* R. *trahit eos in Placitum coram vobis*, &c. And he may have a Prohibition to the Party himself *Ne sequatur*, by these words; *Prohibemus tibi, ne sequaris Placitum in Curia Christianitatis de Advocat'*, &c. *unde* C. *queritur quod tu trahis eum in Cur'.* &c. And he may have an Attachment thereupon against him, if he follow it after the Writ cometh unto him.

And

And the King for himself may sue forth this Writ, although the Plea in the Spiritual Court be betwixt two common persons, because the Suit is in derogation of his Crown. K

And the King may sue an Attachment upon the same, if they do proceed, &c. And in the time of Vacation of a Bishoprick, the Prohibition shall be directed unto the Gardian of the Spiritualties, *et ejus Officiali et Commissariis.* And a Prohibition lieth for Chauntries, Chappels, Prebends, and Vicarages, &c. F G

If a man sueth another in the Spiritual Court for a Chattel or Debt, the Defendant shall have a Prohibition, and the Writ shall be; *Prohibemus vobis, ne ten. Placitum in Curia Christianitatis de Catallis vel debitis,* &c. And he may have a Writ unto the party himself, that he shall not sue there, &c. and shall have an Attachment thereupon, if they sue there afterwards, &c. And also the King may sue this Writ, and it may be directed unto the Judge and Party. And the King may have an Attachment upon it. H

If a man sueth another in the Spiritual Court for a Lay fee, which is Land or Tenements, or the like, then he shall have a Prohibition, and the Writ shall be; *Prohibemus vobis, &c. ne teneatis, &c. de Laico feodo Regis in S. unde queritur quod* H. *trahit eum in Placitum,* &c. And he may have another Writ unto the party himself, &c. *Ne sequatur* &c. and he may sue an Attachment upon it; and he may sue an Attachment only against the party, or against the Judge only, or against both, at the Election of the party who will sue. And if the Judge do dwell in one County, and the party in another County, then if he will have an Attachment against both, he must sue forth several Writs. And so it seemeth if he sue several Prohibitions against them, he ought to sue several Attachments against them, if he will sue both, although they be dwelling in one County. I

And a man shall have an Attachment upon a Prohibition against the Judge, if he refuse to receive the Prohibition, and to admit of it. K

Vide 11 H. 4. 47. by which it seemeth a Spiritual thing. 7 H. 4. 1.

And a Prohibition lyeth, if a man be sued in the Spiritual Court for the Collation unto a Grammar School. L

If a man sue for Trespass in the Spiritual Court, the King or the party shall have a Prohibition and Attachment, as before is shewed, unto the Judge, or party, or unto them both. M

In

N In ſome caſes a man ſhall have a Prohibition when he is ſued in the Spiritual Court for the Tithes of his Lands. As if a man be the Kings Tenant, and holdeth of him in chief by Knights Service, and is ſued in the Spiritual Court for the Tithes of the Demean Lands he ſhall have a prohibition, becauſe that theſe Lands may come into the King's hands by reaſon of Wardſhip, or by Eſcheat; and then perhaps the King ſhall be otherwiſe charged than he ought to be charged and therefore the ſame ought to be tried before the King in his Chancery.

And ſo, if a Biſhop grant unto a Preſentee of the Church of *Lincoln* the Tithes of his Demean Lands, to him and his Succeſſors; now if the preſentor be impleaded in the Spiritual Court for theſe Tithes, the King may grant a prohibition, and the form is ſuch;

Rex tali Judic' ſalutem, &c. Monſtravit nobis venerabil. Pater Linc. *Epiſcopus quod cum I. Præſint in Eccleſia beate Mariæ* Linc' *teneat de dono ſuo omnes Decim. Dominicarum terrarum ſuarum, vel Dominici ſui de N. quas id. Epiſc. at prædeceſſ. ſui Epiſc. loci prædicti conferr. conſueverunt, Prior Sanctæ* Katherine *extra* Lincoln' *clamans Decimas illas pertinere ad Eccleſiam de B. trahit eum inde in placitum, &c. Et quia pred. Placitum tangit Coronam et dignitatem noſtram, præſertim cum Collatio earund. Decimar. ad nos poſſit devolvi ratione Cuſtodiæ vel Eſcaet' quia etiam conſimiles Decimas cauſerimus in quibuſd. Dominicis, et ſimilit. quamplures Magnates regni noſtri in Dominicis ſuis; vobis prohibemus, &c.* [41.]

A Alſo a man may ſue a prohibition directed unto the Sheriff, that the Sheriff do not ſuffer the King's Lay Subjects to come to any place at the Citation of the Biſhop, *ad faciend. aliquas Recognitiones, vel Sacram. præſtand', niſi in cauſis matrimonialibus et Teſtamentariis.* And the party may have thereupon an Attachment againſt the Biſhop, if he cite or diſtrain any one to appear before him to take an Oath at the will of the Biſhop, againſt the will of him who is ſo ſummoned or cited. And by that it appeareth, that thoſe general Citations which Biſhops make to cite men to appear before them *Pro ſalute animæ*, without expreſſing any cauſe, are againſt the Law, and the party may have an Attachment againſt the Biſhop for the ſame, and may ſue a Prohibition ſo to do. And if he do expreſs any cauſe in the Citation, it ſeemeth by the Writ before, that it ought to be for ſome Matrimonial or Teſtamentary cauſe. See 50. N.

B If a man doth acknowledge in the Spiritual Court that he

oweth another man one hundred pound to pay to him at a day certain, and after doth not pay the ſame, &c. if he be ſued in the Spiritual Court for this Debt, he ſhall thereupon have a Prohibition: and ſo if he acknowledge in the Spiritual Court, that he ought to pay to ſuch a one 100 Marks at ſuch a day, &c. he ſhall not be ſued in the Spiritual Court for that Debt; and if he be, he ſhall have a Prohibition and an Attachment thereupon. But if a man, by reaſon of Marriage, or of a Will, doth acknowledge in the Spiritual Court that he ought to pay 100 Marks or any other Sum at a certain day; then if he do not pay it according to his acknowledgment, he may be ſued in the Spiritual Court for the ſame, and a Prohibition will not lie.

Vide 22 Aſſ. 70 *Thorpe.*

And if a man do acknowledge in the Spiritual Court to pay a certain Debt at a certain day, and doth not pay it at the day, for which the other ſueth him in the Spiritual Court, and excommunicateth him there, becauſe he did not pay it at the day; the other party ſhall have a Prohibition againſt him.

If a man do recover a Debt in the Spiritual Court againſt another, and after ſueth there to have Execution; the party grieved ſhall have a Prohibition againſt the party and the Judge, and an Attachment upon the ſame.

If a man be indebted unto the King, or bounden to render an Accompt unto him, and after his Executors are ſued in the Spiritual Court for a Debt which doth not concern Matrimony or Teſtament; his Executors ſhall have a Prohibition againſt the Judge, &c. rehearſing the ſpecial matter, &c.

Where an Abbot, or Biſhop, or other perſon whatſoever; ſueth in the Spiritual Court, becauſe he taketh Toll or other Compoſition or Cuſtom of his Tenants, &c. there the Party grieved ſhall have a Prohibition againſt him; or the King may ſue this Prohibition and Attachment thereupon.

Where a man granteth parcel of his Mannor to another Parſon in Fee, to be quit of Tithes by Deed, and the Parſon with the aſſent of the Ordinary grants unto him, that he ſhall be quit of Tithes of his Mannor for this parcel of Land, &c. if he or his aſſignee be afterwards impleaded in the Spiritual Court for Tithes of his Mannor, or any parcel of his Mannor, or any parcel of the Mannor, he or his Aſſignee ſhall have a Prohibition upon that Deed: and if the Deed were made before time of memory, and ſo had con-

Vid. Br. Preſcription 603.

tinued

ſtained to be quitted of Tithes of his Mannor, he ſhall have a Prohibition, if he be impleaded for the Tithes of that Mannor, or any parcel thereof, upon the matter ſhewed.

H. If a man ſue any Prohibition to any Spiritual Court, and the Judges will not receive the ſame, or will not allow it, and becauſe he bringeth the Prohibition, they make a Citation againſt the party, to anſwer before them for the ſame cauſe, now he ſhall have a new Prohibition upon the matter directed unto the Judges there, &c. And alſo he ſhall have an Attachment thereupon, if they proceed againſt him in their Court. And it is not material whether the Prohibition were ſued legally or erroneouſly, becauſe he ſhall not be puniſhed for ſuing a Prohibition in the King's Court.

I A man deviſeth Lands in *London* in Mortmain, and by reaſon of this Deviſe the Abbot, or he to whom the Deviſe is made, ſueth for theſe Lands, or for any parcel thereof, in the Spiritual Court by Colour of the Deviſe: the party grieved by this Suit ſhall have a Prohibition.

K If a man ſue another in the King's Court in Treſpaſs for Battery, or taking of his Goods, and afterwards is Non-ſuit, and diſcontinueth the Suit, for which the Defendant ſueth him in the Spiritual Court for Defamation, &c. he who hath ſued in the Temporal Court ſhall have a Prohibition againſt him, and at Attachment thereupon, if he ſue again in the Spiritual Court; and alſo ſhall have ſuch Prohibition unto the Judge, and Attachment againſt him, if he hold Plea therein after the Prohibition delivered unto him.

L Where a Compoſition is made by Deed indented at the time of the Avoidance of a Prior, that an Abbot ſhall nominate ſix perſons, and that the other ſhall elect one of them to be Prior unto the Ordinary; now if he who preſenteth be ſued in the Spiritual Court, becauſe he hath preſented one unto the Ordinary for to be Prior, he ſhall thereupon have a Prohibition againſt him who ſueth there. [42]
And if the Sub prior and Covent ſue in the Spiritual Court to avoid ſuch Preſentment, he ſhall have a Prohibition againſt the Judge, &c.

A And alſo the King may have a Prohibition directed unto the Ordinary, that he ſhall not viſit the Hoſpitals which are of the King's Foundation, or of the Foundation of his Predeceſſors, becauſe that the Chancellor of *England* ought for to viſit them and no other. And ſo is it of the King's or his Progenitors free Chappels, no Ordinary ſhall viſit them, but the Chancellor of *England*, &c. 1 Aſſ. 2. Br. Aſſize 131.

Where

6 H. 7. 14. *Kebl.* vide 8 Aſſ. 29. Br. Aſſize 238.

Where a common perſon is the Founder of an Hoſpital, B which is donative by his Letters Patents, and doth conſiſt all in Temporalties, if the Ordinary will viſit ſuch Hoſpital, the Founder ſhall have a Prohibition againſt him; or, if the Ordinary will cite any of the poor men to appear before him for an Hoſpital cauſe, or to remove him, the Founder, or his Heir, ſhall have a Prohibition. And ſuch Hoſpital may be appendant unto a Mannor, as well as the Advowſon of a Church.

And if a man recover his Preſentation by *Quare Im-* C *pedit*, and hath his Clerk admitted and inſtituted; and another perſon who claimeth the Advowſon by proviſion from the Pope ſueth in the Spiritual Court, for to avoid and remove the other Clerk; the Patron who hath recovered his Preſentment, &c. ſhall have a Prohibition unto the Judge for to ſurceaſe, &c.

So if the King hath Title to preſent unto an Advowſon, D by reaſon of a Ward who is in the King's hands, and after the ſix Months paſt preſenteth his Clerk, who is admitted and inſtituted, and the Biſhop preſent his Clerk before to the ſame Church for Lapſe, who was admitted and inſtituted, &c. by reaſon whereof the Biſhops Clerk ſueth the Clerk, who was preſented by the King in the Spiritual Court; the King's Clerk ſhall have a Prohibition directed unto the Judges, &c. that they ſhall not proceed in the Plea, &c.

If a man ſueth a Prieſt or a Monk, or Canon, or Clerk, E in the Temporal Law, in Debt or Treſpaſs, and cauſe him to be arreſted by his Body; if they ſue for his Arreſt a Citation in the Spiritual Court *de violenta manuum injectione in Clericum*, the other ſhall have a Prohibition directed unto the Judge.

See the Statute 9 E. 2. *Articuli Cleri.*

If two men are ſworn to give Evidence unto a Jury, and F do ſo, for which certain perſons are indicted; if they who are indicted ſue them in the ſpiritual Court who gave evidence for Defamation, they ſhall have a Prohibition.

Where a man ſueth in the Spiritual Court for Spiritual G cauſes, and the Defendant purchaſeth a Prohibition directed unto the Judges there, and delivers the ſame; and for ſo doing the Judges do Excommunicate him for the offence he did to the Church; in bringing a Prohibition to them upon a Spiritual Cauſe; the party Excommunicate ſhall have a new Prohibition upon that matter, commanding them for to revoke the ſame. For a man ſhall not be puniſhed for ſuing forth Writs in the Kings Courts, whether he have right or wrong.

If

H If a Clerk of the Chancery, or any of his Servants, or the Keeper of the Great Seal, or any of his Servants or the Chancellor, or any of his Servants, be ſued in *London* before the Major or Sheriff for Treſpaſs, they ſhall have a *Superſedias* directed unto the Major for to forceaſe, and bid the party ſue in the Chancery, if it be needful for him. And there are divers forms of theſe Writs in the Regiſter; and one Writ reciteth, that this Cuſtom and privilege was confirmed by Authority of Parliament *Anno* 18 E. 3. *Vide* 4 H. 3. Prohib. 15. *Vid.* 43. D.

I If a Woman hath Title to ſue a *Cui in vita*, and ſhe ſwear unto the Tenant, that ſhe will not ſue the *Cui in vita* againſt him; if ſhe afterwards ſueth forth the Writ, for which the Tenant ſueth her in the Spiritual Court for breach of her Oath, ſhe ſhall have a Prohibition, becauſe the Oath toucheth a Temporal thing, *viz.* Land. 11 H. 4. 39.

K If two ſeveral Patrons preſent ſeverally to the Biſhop, and thereupon one ſueth a *Quare Impedit* or a *Darrein Preſentment* againſt the other, and recovereth, and hath his Clerk admitted, for which the other Clerk ſueth the Clerk who recovereth by Appeal or otherwiſe, in the Archbiſhops Court, becauſe that he was not admitted at the preſentment of his Patron; the Patron who recovereth ſhall have a Prohibition directed unto the Archbiſhop, &c. or againſt the Clerk that ſueth there for that cauſe, that he do not ſue for that cauſe, &c.

L And ſo is it if the Patron be diſturbed by the preſentment of a Stranger, and the Diſturbers Clerk ſueth the very Patrons Clerk in the Spiritual Court; or contrary, the Clerk of the rightful Patron ſueth the Clerk of the Diſturber in the Spiritual Court, he who is grieved ſhall have a Prohibition.

M And if the King do collate unto any Prebendary, or recovereth the Collation unto any Prebendary, and hath his Clerk admitted, and afterwards the Clerk who is vexed ſueth in the Spiritual Court, by means of Appellation, or Commiſſion, or other cauſe, by which the Title of the Collation may come in debate, the King ſhall have a Prohibition directed unto the Judges where the Suit is, commanding them that they do not proceed. And if the King

N do recover his Collation or Preſentation unto any Church, and after Execution of the Judgment is diſturbed by Appeals, or Citations, or other ſuch means; or if that after the Clerk be inducted, the King's Clerk be vexed by Appeals, or Commiſſions, or Citations in the Spiritual Court for this cauſe; then the King ſhall have a Writ, directed [43.]

unto

unto all Sheriffs, Majors, and other Officers, to take and arreſt the Bodies of thoſe who made ſuch impediments, to diſturb the Execution of the Judgment, or of ſuch Preſentations or Collations made by the King; and alſo ſhall have a Writ of Prohibition unto the Biſhops and their Officers, that they do not any thing in derogation of his Preſentment or Collation, or of the Execution of the Judgment given for the King. And alſo the King may ſue ſuch Prohibition directed unto the party himſelf who ſueth ſuch Appeals, Provocations, Citations, Inſtruments, or Proceſs, &c. that they do not ſue ſuch, or permit ſuch Appellations, Provocations, or Impediments to be. And the King ſhall have Attachment upon that directed unto the Sheriff, &c. if the party follow or ſuffer ſuch, &c. to be ſued contrary to that Prohibition.

If the King do recover his Preſentment unto a Church, A and hath a Writ unto the Biſhop, &c. to remove the other Incumbent, for which the Incumbent ſueth an Appeal in the Archbiſhops Court, &c. by reaſon whereof the Archbiſhop ſendeth a Prohibition that he do not admit the King's Clerk pendant the Appeal, &c. then the King ſhall have a Writ directed unto the Archbiſhop and his Officers to take off his Inhibition, and that they do nothing, nor ſuffer any thing to be done by others, in derogation of the Crown or of the King's right; and ſhall have another Writ againſt the Incumbent, that he follow not ſuch Appeals, Provocations, or other Proceſs or Impediments. And alſo the King may have an Attachment directed unto the Sheriff againſt ſuch Incumbent, if he go on there after ſuch Prohibition directed unto him.

And it appeareth by the *Regiſter*, that another common B perſon who recovereth his Preſentment, or hath title to preſent, ſhall have ſuch Writs of Prohibition unto the Spiritual Judges, or the party, that they ſhall not proceed, or purſue ſuch, &c. and alſo Attachment againſt them if they do, &c. And where the King's Clerk is in poſſeſſion by ſuch recovery, and is after diſturbed by another with force and arms, that he cannot take the Tithes and profits of the Church, he ſhall then have a ſpecial Commiſſion directed unto the Sheriff, and other the King's Officers, to take ſuch perſons, as well within Liberties as without, and to carry them unto the Gaol, there to remain till they have other command from the King.

And if the King do recover his Preſentment, and hath a Writ unto the Biſhop, and his Clerk is inſtituted and inducted

duſted; if the Biſhop at the ſuit of others hath Provocations, or other Inſtruments, to cite the King's Incumbent to the Court of *Rome*, or elſewhere out of the Kingdom; then the King ſhall have a Prohibition directed unto the Biſhop, that he do not cite, nor cauſe to be cited, ſuch Incumbent, &c. and the King may have an Attachment upon it, if, &c. And it ſeems that the King ſhall have a Prohibition without any Recovery had before, if his Preſentee be inſtituted, &c. And ſo it ſeems a common perſon ſhall have and ſue ſuch a Prohibition, when the Suit is to try the Title of the Preſentment or Collation; yet the Writs in the Regiſter are and ſpeak of a Recovery.

D If a man make oath to infeoff me before ſuch a day, &c. if he do not infeoff me, I cannot ſue him in the Spiritual Court for breach of his oath, becauſe the thing which is to be done is a Temporal act, and ſhall be tried at the Common Law, whether he hath done it or not; and therefore if he be ſued in the Spiritual Court for that cauſe, he E ſhall have a Prohibition. And if a man be ſued in the Spiritual Court, and the Judges there will not grant unto the Defendant the Copy of the Libel, then he ſhall have a Prohibition directed unto them for to ſurceaſe, &c. until they have delivered the Copy of the Libel, according unto the Statute made *Anno* 2 *H.* 5. And alſo the Defendant may have an Action againſt them upon the ſaid Statute, if they will not deliver the Copy of the Libel, whether the cauſe in the Libel be a Spiritual cauſe or not. 11 H. 4. 83. contrary for perſonal things. 4 H. 3. Prohibition 15. See 42 E. 2 E. 4. 16. 4 E. 4. 37.

F If a man maketh a Deviſe of Lands or Tenements deviſable, the party to whom the Deviſe is made ſhall not ſue in the Spiritual Court to have the Lands or Tenements ſo deviſed; but if he do, the other party ſhall have a Prohibition. But if he deviſeth Goods or Chattels Real, as a Term for years, or a Ward; there he may ſue in the Spiritual Court for ſuch things. 37 H. 6. 9. *Admon.* 46 E. 3. 32. 2 H. 8. Prohibition 19.

G If a man ſueth in the Common Pleas for Treſpaſs, if he ſue him in the Spiritual Court for the ſame cauſe, he may ſhew the matter in the Common Pleas, and ſhall have a Prohibition from thence directed to the Judges, &c. And ſo alwaies when the matter is depending in the Common Pleas, if he ſue for the ſame cauſe in the Spiritual Court he ſhall have a Prohibition out of the Common Pleas. 13 H. 6. Prohibition 3. 4 E. 4. 37. 38 H. 6. 14.

H But a man ſhall have a Prohibition out of the Chancery or Kings Bench upon his Surmiſe ſurmiſing that he is ſued in the Spiritual Court for a Temporal Cauſe, &c. although he be not ſued in the King's Bench; or otherwhere, for that cauſe. 31 H. 8. Br. Prohibition 17.

If a man ſue a *Quare impedit*, and deliver it of Record, I as he may, and afterward the Defendant, or his Clerk, ſue
2 E. 4. 11. a Citation againſt the Preſentee of the Plaintiff; the Plain-
Vide 38 H. 8. 5. tiff in the *Quare impedit* ſhall have a Prohibition in the Common Pleas, before the return of the Writ of *Quare impedit*, becauſe it appeareth on Record that ſuch a *Quare impedit* is depending.

If a Parſon grant to one by Deed, that he ſhall be diſ- K charged of Tithes of his Lands, and afterwards he ſueth in the Spiritual Court for the Tithes, &c. it is ſaid that he
[44] ſhall not have a Prohibition, becauſe he may pretend this matter in the Spiritual Court, to diſcharge him of the Tithes. But if it were upon a Compoſition made before time of memory, and now the Parſon ſueth for the Tithes of thoſe Lands, there he ſhall have a Prohibition againſt the Parſon, &c. *Quære* the diverſity, for I think he ſhall have a Prohibition in both caſes. The caſe is *M. 8. E.* 4. 14.

Vide Com. 305, & 309. 37 H. 6. 8. 45 E. 3. 24. *Vide* 50 S. 22 Aſſ. 70. 27 E. 44. 15 H. 3. Prohib. 22. 16 E. 3. *ibid.* 24. If a man promiſe one 10 *l.* if he will marry his Daugh- A ter; if he marry the Daughter, and the other will not pay the money, he ſhall not ſue for the ſame in the Spiritual Court. But if he promiſe one with his Daughter in marriage 10 *l.* &c. if he doth marry the Daughter, and he do not pay the money, he may ſue in the Spiritual Court for the 10 *l.* becauſe it concerneth Matrimony. Which diverſity ſee in 22 *E.* 3 *lib. Aſſ.*

If the Teſtator charge his Executors to pay his Debts to J his Creditors, if they do not pay them, the Creditors may ſue in the Spiritual Court; and they ſhall not have a Prohibition, for that this charge of the Teſtator is as a Deviſe unto his Creditors: *quod vide H.* 9. *E.* 3. *Prohibition* 17.

13 H. 3. Prohib. 21. *Vide* 139. If a man giveth Goods in marriage with his Daughter, and C afterwards they are divorced; the Wife may ſue in the Spiritual Court for the Goods, and no Prohibition will lie thereof.

If a Stranger do diſturb the Executors to perform the D Will, they may ſue him in the Spiritual Court, and no *Prohibition* lieth againſt them for ſo doing *T.* 4 *H.* 3. *Prohibit.* 28. *aut.*

If a man ſueth a Prohibition becauſe another draweth
4 E. 3. 27, 29. Prohib. 2. him into the Spiritual Court for an Advowſon of a Church, &c. upon the Attachment upon the Prohibition ſued he may declare, that he did deforce him of great and ſmall Tithes, &c.

If one Parſon ſueth another Parſon in the Spiritual Court I for Tithes of the profits ariſing in one hundred Acres of Lands within the bounds and limits of his Pariſh being,

for

for which the Patron of the other Parſon purchaſeth an *Indicavit* unto the Spiritual Judge for to ſurceaſe, &c. then may the Parſon who ſueth in the Spiritual Court come into the Chancery, and have a Writ unto the Biſhop for to enquire of the value of the Church, according to the Tax of Tithe now current, as upon the value of the Tithes demanded, and to certifie the King in the Chancery thereof by Letters under his Seal, with the Writ: and it ſeemeth he ought ſo to do before he have a Conſuſation granted in that caſe.

G If a Biſhop will cite or compel the Kings Chaplains, or the Maſters of the Chancery, which are the King's Chaplains, to make their perſonal Reſidence upon their Benifices when they are Attendants in the Kings ſervice, they may have a Prohibition unto the Biſhop, &c. and upon the ſame an *Alias*, *Pluries*, and Attachment. But if they be not attending in the Kings ſervice, then the Ordinary may compel them to make perſonal Reſidence upon their Benefices; and the form of the Writ is ſuch:

Rex venerabili, &c. Cum Clerici noſtri ad faciend. in Beneficiis ſuis Reſidentiam perſonaliter, dum in noſtro immorant obſequio, compellari alias ſuper hoc moleſtari ſeu inquiſitari non debeant; Nos, ex Progenitorum noſtri quond. Regis Angl', hujuſmodi Libertat. & Privileg. pro Clericis noſtris a tempore quo non exiſtit memoria ſemper hactenus uſi ſumus: vobis mandamus, quod dilect' Clericum noſtrum, Perſonam Eccleſiæ de B. &c. quæ per præſent. noſtrum in Cancellar. noſtra noſtris jugit. intendit obſequiis, ad perſonalem Reſidentiam in Benefic. ſuo, &c. dum in eiſdem obſequiis noſtris immoratur, nullatenus compellatis vel moleſtetis, &c.

And if the Kings Chaplain be choſen Dean of any Church, which Office requireth perſonal attendance and Reſidence, and the Biſhop will compel him to take the Deanry which requireth that perſonal Reſidence, by Spiritual Cenſures and Citations, &c. then he ſhall have a Prohibition unto the Biſhop by theſe words: *Vobis diſtrict. prohibemus, ne ipſum A. ad Reſidentiam aliquam in Benefic. ſuo faciend', ſeu aſſumend. officium præd', vel aliquod hujuſmodi Reſidentiæ requir', dum obſequijs noſtris præfic. intenderit, quoquo modo compellatis; & Sequeſtr', ſi quod in fructibus aut alijs bonis Eccleſiæ dict. Clerici noſtri per ipſum Epiſcopum aut ſuos ea occaſione oppoſitum fuer', ſine dilatione faciat relaxari, &c.* And ſo if the Clerk abide in the Kings ſervice in the Company of our beloved and truſty *R.* of *P.* in the parts of *Gaſcony*.

And ſo if the Biſhop will amerce the Kings Chaplains, and compel them to pay a certain ſum of money for Non-reſidence, they ſhall have a Prohibition.

Vide Statut. Articuli Cleri, cap. 2.

If one ſue another out of the Realm for debt, or other cauſe, whereof the Kings Court may have conuſance, he ſhall have a Prohibition againſt him and an Attachment upon the ſame, if, &c. And ſo if one Clerk ſueth another upon the Title of Collation of any Prebendary out of the Realm, &c. he may have this Prohibition: And the King may ſend a Writ to him who is ſo ſued out of the Realm, commanding him upon pain of forfeiture of ſo much as he may forfeit, that he go not out of the Realm for to anſwer thereof, whereof the conuſance doth appertain unto the King's Court. And alſo the King may ſend unto the Prebend, if he be ſued out of the Realm for Title of the Prebendary, to prohibit him, upon pain of Impriſonment, and of forfeiture of what he may forfeit, that he go not go out of the Realm, nor anſwer there by his Proctor, or otherwiſe, &c.

And if any man do purchaſe from the Court of *Rome* any Citation againſt any Clerk, or others, directed unto the Archbiſhop of *Canterbury*, or unto others, to cite ſuch perſons to appear before the Pope, &c. and to anſwer for the
[45.] Collation or Preſentation unto any Benefice or Prebendary, then the King ſhall ſend his Writ of Prohibition unto the Archbiſhop, or other to whom ſuch Proceſs is directed, that they do not cite, &c. and may have another Prohibition to the party himſelf, and an Attachment upon the ſame, &c.

And when a Conſultation is once duly granted, then the Court may proceed in the Spiritual Court, notwithſtanding that the party purchaſe a new Prohibition directed unto them, if the Libel be not changed: *quod vide* by the Statute of 50 *E.* 3. *c.* 4.

The Writ of Prohibition which is called *Indicavit* moſt commonly lieth between four perſons, whereof two are Patrons, and two Clerks, and properly lieth where one Clerk ſueth another in the Spiritual Court for Tithes which do amount unto the fourth part of the value of the Church at the leaſt; for if it doth not amount unto the value of the fourth part, but unto the fifth part, the *Indicavit* doth not lie. And this Writ lieth for the Patron, and that Clerk who is ſued in the Spiritual Court; and this Writ may be ſued as well againſt the Judge as the party. And the King may ſue this Writ where his Clerk is impleaded for Tithes amounting to the value of the fourth part of the Church, or of the Church it ſelf: And this Writ of *Indicavit* lieth as well for the Patron, where his Clerk is impleaded for the Advowſon it ſelf, or ſuch Vicarage, Prebend, or Chappel, as well as if he were impleaded of the

the Tithes of the Church, Vicarage, Prebend, or Chappel.

And it appeareth by the Regiſter, the Writ of *Indicavit* which the King ſhall have where the Clerk is impleaded in the Spiritual Court for Tithes, not making mention what is the value of the fourth part, is ſuch:

Rex Officiali Epiſcopi, &c. *& ejus Commiſſariis ſalutem: Cùm A. de B. Perſona Eccleſiæ de W. teneat omnes Decimas provenientes de Maniſco*, &c. *de Advocatione noſtra, Abbas de Bello clamavit pertinere ad Eccleſiam ſuam de*, &c. *trahit eum in Placit' &c. Vobis prohibemus*, &c. *utrùm ad nos an ad præd' Abbat. pertinet earundem Decimarum Advocatio, quia Placita* &c. And this Writ of *Indicavit* ought to be ſued by the Patron before Judgment given in the Spiritual Court, for after Judgment given there the *Indicavit* is void.

C And a man ſhall not have an *Indicavit* before the party in the Spiritual Court hath libelled there againſt the Defendant; and the party who ſueth the *Indicavit* ought to ſhew the Copy of the Libel in the Chancery, before he have the *Indicavit*. And when the party hath libelled in the Spiritual Court, and the party is put to anſwer, then it is called and ſaid, that the Suit is conteſted in the Court of Chriſtianity. 31 H.6. 13.

D And *Indicavit* lieth for Tithes and Offerings, if Suit be in the Spiritual Court for them, as well as it lieth of an Advowſon; and that for a common perſon, as well as for the King. And the Writ of *Indicavit* ſhall not mention that the Tithes and Offerings which are in ſuit do amount unto the fourth part of the Church, but *Decimas provenientes de centum acris terræ*, or of ſuch a Mannor: and if theſe Tithes be not to the fourth part of the value of the Advowſon, the other party may alledge and ſurmiſe the ſame, and have a Conſultation. 4 E.3.27. 29 Prohibition 1.

E And alſo *Indicavit* lieth where one party is Parſon imparſonee, and the Clerk of the other Patron ſueth him in the Spiritual Court for Tithes, &c. he may ſue the *Indicavit*. And ſo if an Abbot be Parſon imparſonee of a Church, and another Abbot is Parſon imparſonee of another Advowſon, and one ſueth the other for Tithes appertaining to his Advowſon, amounting unto the fourth part of the Church, &c. the other ſhall have the *Indicavit* againſt him.

And if an Abbot be Parſon imparſonee of an Advowſon, and hath a Vicar endowed; then if the Parſon be ſued in the Spiritual Court for the fourth part of the Tithes of his Parſonage, he ſhall have *Indicavit*. And ſo if the Vicar be ſued for the fourth part of the Tithes and Offerings of his

Vicarage the Parſon, or he who is Patron of the Vicarage, ſhall have the *Indicavit*, becauſe they are ſeveral Advowſons; the Parſonage one, and the Vicarage another, and there may be divers Patrons of them. *Quod vide Paſch.* 31 *H.*6. in Title *indicavit.*

If Bailies, Majors, or others, who claim Juriſdiction to arreſt a man upon a Plaint before them, or to Attach his Goods, &c. do arreſt one for Treſpaſs or Contract who was not within their Juriſdiction, the party arreſted &c. ſhall have a Prohibition directed unto them, &c. and the form is ſuch:

Rex Ballivis A. *de* N. *ſalutem. Cùm de communi conſilio regni noſtri proviſum ſit, quòd non licebit alicui de reg. regno, niſi nobis, & miniſtris noſtris ſpecialem autoritatem ad hoc habentibus, aliquem per Ballivam ſeu poteſtatem ſuam tranſeuntes attachiar', ad reſpondendum alicui ſuper contract', conventionibus, ſeu tranſgr. aliquis extra exud. Ball. ſeu poteſtat factis; Vobis præcipimus, quòd non attachiatis* B. *ad reſpondend. alicui eorum vobis in Ball. noſtra ſuper hujuſmodi contractibus, conventionibus, ſeu tranſgr', contra formam proviſion. prad' & Diſtriction', ſi quam inde feceritis, deliberari faciatis*, &c. And if they will not obey the ſame, he ſhall have an Attachment againſt the Bailies. And this Writ lieth as well upon Attachment of Goods, as for arreſting of the Body.

If a Woman have Lands which ſhe holdeth in Dower, or of joynt purchaſe with her Husband, or of her own inheritance, if the Sheriff have Proceſs out of the Exchequer to levy the Husbands Debts which he oweth unto the King; or if the Sheriff have Proceſs out of another Court to levy Debts due by her Husband to another perſon; if the Sheriff will diſtrain in the Lands which the Wife holdeth, &c. the Wife ſhall have a Writ unto the Sheriff, that he do not diſtrain the Wife who holdeth ſuch Lands, in the ſame Lands, for the Debt of the Husband; and the form of the Writ is ſuch: [46]

Rex Vic', &c. *Cùm ſecund. Legem & conſuetud. regni noſtri mulieris in Terris & Tenementis quæ tenent in dotem de dom virorum ſuorum, vel quæ ſunt de hæreditate ſua, vel quæ ſibi acquiſierunt, pro debitis virorum ſuorum reddend. diſtringi non debeant, ac tu* B. *quæ fuit uxor* A. *diſtring. in Terris & Tenementis ſuis, quæ tenet in dotem ex dono ejuſd.* A. *& etiam quæ fuer, de hæreditate ipſius* B. *ac ex quæſito ipſius* B. *ſicut ex gravi querela ſua accepimus: Tibi præcipimus, quòd ipſam* B. *in Terris & Tenementis ſuis quæ tenet in dotem, vel quæ ſunt de hæreditate ſua propria, vel ex quæſit. ipſius* B. *pro debit. prad. A. ipſorum vir' ſui, reddend. non diſtringas, vel diſtringi fac', contra*

contra Legem & conſuetud. prædict'; & Diſtrictionem ſi quam. &c.

And there is ſuch a Writ unto the Sheriff, where Proceſs cometh unto the Sheriff out of the Exchequer, to levy the Debts of the Husband, *per ſummas Scaccarii*, &c. And in that caſe ſhe may ſue a Writ unto the Barons of the Exchequer, that they ſurceaſe to make out ſuch Proceſs to the Sheriff to diſtrain the Wife in ſuch Lands, &c. Another form of Writ unto the Barons of the Exchequer, to ſurceaſe for to diſtrain the Wife, &c. and with a Proviſo in the ſame Writ, that they levy the Debts of the Husbands Executors, or of his Heir, or of the Lands and Tenements which were the Husbands, &c.

A And if a man ſue another in the County-Court for Debts or Chattels which do amount to the ſum of 40 *s.* then the party ſhall have a Prohibition againſt him who is Sheriff, that he ſhall not hold Plea thereof, and that he tell the party that he ſue in the Common Pleas, and the Writ is ſuch:

Rex Vic' &c. *Cùm Placita de catallis & debitis quæ ſummam quadraginta ſolidor. attingunt, vel eam excedunt, ſecundùm Legem & conſuetud. regni noſtri ſine Brevi noſtr. placitari non debent; ac A. B. de debit. centum ſolid. in Com. tuo ſine Brevi noſtro implacitavit, ut accepimus: Tibi præcipimus, quòd ſi ità ſit, tunc Placito illo in Com. prad. ſine Brevi noſtr. ulteriùs tenend. ſupersed. omnino & præf. A. dicas ex parte noſtra, quòd Breve noſtrum de prædict. debit. verſus prad. B. ſibi impetret, ſi ſibi videret expedire. Teſte*, &c. And if ſuch Writ be ſued in another Court, then the Writ ſhall be directed unto the Baily of the Court, in ſuch form:

Rex Ballivis I. de N. vel Ball. ſuis de N. ſalutem. Cùm Placita. &c. uſque ibi, *non debeant Jac A. B. de eo, quòd idem B. redd. præf. A. catall. ad valentiam decem librar. eorum nobis in Curia dicti Dom. noſtri de N. vel in Curia noſtra de N. ſine Brevi noſtro implacitet, ut accepimus; Vobis præcipimus, quòd ſi ità ſit, tunc Placito illo*, &c. ut ſupra. And if they do not ſurceaſe upon this Writ, then he ſhall have an *Alias* and *Pluries*, and Attachment againſt them, and alſo an Attachment againſt the party himſelf.

And if a man do owe unto another man five Marks, and he ſue ſeveral Plaints for the ſame in the County-Court or in any other Court againſt the Debtor, he ſhall have a Prohibition thereof, and rehearſe the matter, and that he would defraud the King's Court of its Juriſdiction, and alſo the party of his anſwer, &c. commanding them that they do not proceed, &c. and that he command the party to ſue at the Common Law in the King's Court, and if they will not

ſurceaſe, he ſhall have an *Alias* and *Pluries*, and Attachment upon the ſame, &c.

And ſo it is if a man will ſue in the County-Court a Writ of Covenant or Treſpaſs, unto his damage of forty ſhillings or more, the party ſhall have a Prohibition for to ſurceaſe, and thereupon an *Alias*, *Pluries*, and Attachment, &c.

And ſo if the Executor ſueth in the County, or in a Court-Baron, for a Debt of five Marks by divers Plaints, whereas the Debt is upon a Contract, or upon an Obligation; now the Defendant may ſhew the ſame, and plead unto the Juriſdiction of the Court, or he may have a Writ of Prohibition directed unto them, that they do ſurceaſe, &c. and if he have Judgment in any of the Plaints ſued for parcel of the Debt, yet in the Prohibition he may Prohibit him in the Plaints which are depending, and that Execution of the Judgment ceaſe for the reſidue.

And alſo if a man ſue in the County a Plaint of twenty pounds, and hath Judgment to recover in that Court; yet the Defendant may ſue a Prohibition, commanding the Sheriff and the Suitors that they do not execute the Judgment, although he have before admitted the Juriſdiction.

And ſo after Judgment given and Execution awarded in the County, or in other Court-Baron, which hath not power to hold Plea of Debt of the ſum of forty ſhillings, &c. or of Damages in Treſpaſs amounting to ſuch ſum, or more, the party Defendant ſhall have a Writ of Prohibition unto the Bailies, or unto the Sheriff or Officer of the Court, that they do not Execution; and if they have diſtrained the party to make ſatisfaction, that then they releaſe the Diſtreſs, and that they revoke what they have done therein.

There is a Rule in the Regiſter thus: *Si Placita de catallis vel debitis quæ ſummam quadraginta ſolidorum attingunt, vel eam excedunt, in Com', vel in alia Curia, ſine Brevi placitent, quod abſit, non fiat indè Breve de falſo judicio, nec Recordare, nec Breve de Executione Judicij; exceptis Cur. Civitatum, & aliis quæ ſecundùm Conſuetud. hujuſmodi Juriſdictiones habent, &c.*

[47.]

And if a man ſueth another in the County or other Court upon a Plaint of Treſpaſs *Vi & armis*; the Defendant may ſue a Prohibition unto the Sheriff, or unto the Baily, in ſuch form:

2 E. 4. 15. *Juſticies* lieth without *Vi & armis Limitem.*

Rex Ballivis de B. &c. Cùm Placita de tranſgr. contra pacem noſtram in regno noſtro Angl' vi & armis factis, ſecundùm Legem & conſuet. ejuſd. regni, ſine Brevi noſtro placitar. non debeant, ac W. implacitat. coram vobis in Cur. prædict. Domini

noſtri

vestri R. de T. de diversis transgr. eidem W. per præfat. R. contra pacem nostram, vi & armis (ut dicit.) factis, ut accepimus, in ipsius W. grave dampnum, & contra Legem & consuet. præd': Vobis præcipimus, quòd si ita sit, tunc Placita prædict. coram vobis ulteriùs tenend' supers. omnino, præf. W. dicentes ex parte nostra, quòd Breve nostrum de Transgr. præd. versus præfat. R. sibi impetret, si sibi viderit expedire. Teste, &c.

B And if one man sueth another in a Court-Baron, or other Court which is not a Court of Record, for Charters concerning Inheritance or Free-hold, he shall have a Prohibition, and the form is such:

Rex Ballivis de R. de P. salutem. Cùm Placita de Detentione chartar. seu scriptor. Liber. Tenement. tangentium in aliquibus Cur. quæ Record. non habent, secundum Legem & consuet. regni nostri sine Brevi nostro placitari non debeant, ac E. W. de eo quòd id. W. redd. præf. E. tres Chartas, coram vobis in Cur. præd. Domini vestri de P. sine Brevi nostro implac', ut accepimus: Vobis præcipimus, quòd si ita sit, tunc Placito illo coram vobis in Cur. præd. sine Brevi nostro ulteriùs tenendo supers. omnino, & præf. E. dicatis ex parte nostra, quòd Breve nostrum de Detentione Chartar. præd. versus præf. W. sibi impetret, si sibi viderit expedir'. Teste, &c. An. 8. Apud Abor. *istud Breve ordinat. fuit per Concilium.*

Quare non Admisit.

C IF a man do recover an Advowson, and hath a Writ unto the Bishop to admit his Clerk, and he will not admit him; then the party may sue an *Alias* and *Pluries*, or Attachment, &c. or may sue a Writ out of the Chancery, or out of the Common Pleas, at his election, *de Quare non admisit*, as well in the Term-time as in the Vacation; but the best is in Term-time to sue in the Common Pleas: and in this Writ it behoveth him to certifie the Recovery. And the form of the Writ of *Quare non admisit* for the King is such:

Rex Vic', &c. Sum' &c. A. Winton. Episc', &c. quòd sit coram nobis tali die, &c. ubicunque, &c. Quare cùm nos nuper in Cur' nostra coram nobis recuperâssemus, &c. And he shall not say in the Writ, *Si Rex fecerit te securum*, because the King shall not find Pledges, &c.

D And if the King do recover his Presentment in the Common Pleas, yet he may sue a *Quare non admisit* in the Kings Bench before himself.

And

And so if a common person do recover in a *Quare impedit* in the Common-pleas, and the Record is removed by a Writ of Error into the Kings-Bench, and there affirmed; then he shall have a Writ unto the Bishop here, and ought to sue *Quare non admisit* against the Bishop there upon the Record, otherwise not. After the Record removed by a VVrit of Error, the Plaintiff who recovered shall not have *Quare non admisit* until the Judgment be affirmed in the Kings-bench.

F And the *Quare non admisit* ought to be sued in the County where the Bishop refuseth the Plaintiffs Clerk.

G And in the *Quare non admisit* he shall recover only damages, and shall not have his Clerk admitted by this Writ.

H And if the Bishop hath admitted and instituted him, and the Archdeacon will not induct him, he hath no remedy but only in the Spiritual Court, as it is said; for it is a good Plea for the Bishop to say, That he admitted the Clerk, and sent his Letters unto the Archdeacon for to induct him. And I conceive that if the Archdeacon will not induct the Clerk, that the Clerk shall have an Action on the Case against the Archdeacon, because the Induction is a temporal Act. As if the Sheriff upon *Habere facias seisinam* will not admit him into possession, he shall have an *Alias* and *Pluries*, and Attachment against him. But some have said, that he shall have a Citation against the Archdeacon in the Spiritual Court, and punish him there; for perhaps he may allege a special cause, for which by the Spiritual Law he ought not to be inducted, which cause cannot be determined in the Temporal Court. *Ideo quære.*

I And if the Vicar-general do refuse to admit the Clerk, the *Quare non admisit* shall be brought against the Bishop for that refusal; and if the Bishop do refuse the Clerk, and afterwards dieth, *Quare non admisit* is maintainable against the Gardian of the Spiritualties for this refusal made by the Bishop. *Tamen quære.*

Vide 21 H. 7. 3. A man recovered in a *Quare impedit*, and had a Writ to the Bishop. Who returned, that the Clerk who was in, had resigned, and that the Church was full of the Presentment of J. H. and upon that Return the Plaintiff had a *Scire facias* against the Bishop: and after the Return the Opinion of the Court was, that he should have *Quare non admisit.*

K The Bishop is not bounden to admit the Clerk, if the Church be full of the Presentment of another party who is not party to the Recovery.

L If the Bishop doth refuse the Kings Presentee, and doth afterward admit him, yet the King shall have *Quare non admisit* against him for that refusal; and so shall a common person in like manner have, as I conceive.

In

M In a *Quare non admisit* the Bishop may say, that he did present for Lapse.

N And *Quare non admisit* was maintainable against the Bishops Official, *Mich.* 9. *E.* 3.

A If a man do recover in a *Quare impedit* his Presentment unto a Chappel which is donative, then I think that he shall have a Writ unto the Sheriff to put the Clerk who recovered into possession. [48]

B And in a *Quare non admisit* the Bishop may say, that the Church is litigious betwixt two, &c.

C If a man hath a donative Chauntry, which is of the nature that one name unto another his Clerk, and that the other shall institute and induct him; there if he who hath the Nomination be disturbed, he shall have a *Quare impedit*; and if he do recover, he shall have a Writ unto him who ought to instal and induct him, to put him in possession. But if he be disturbed by him who ought to instal him, then he ought to have a *Quare impedit* against him: and after that he hath recovered he shall have a Writ to him who disturbed him, to put his Clerk into possession; or he shall have a Writ unto the Sheriff, to put the Clerk of him who recovered into possession, at his Election.

Quare incumbravit.

D *Quare incumbravit* ought to be sued in the County where the Church is, because the wrong is done there.

E And *Quare incumbravit* doth not lie but where the Plaintiff recovereth by Judgment of Court. And the King may sue a *Quare incumbravit* in the Kings Bench, although the Record of Recovery be in the Common Pleas; but a common person cannot do so. 17 E. 3. 74.

F And *Quare incumbravit* may be sued in the Common Pleas, although the Record be removed in the Kings Bench by a Writ of Error, or in the Treasury; but if the Record be in the Kings Bench, it seemeth then that the party shall sue the *Quare incumbravit* there, &c. 17 E. 3. 74. for all.

G And *Quare incumbravit* is an Original Writ, and shall issue out of the Chancery, and not out of the Common Pleas.

H And *Quare incumbravit* doth not lie until the party hath sued the Writ of *Ne admittas* unto the Bishop: for if the Bishop do incumber the Church before the Writ of *Ne admittas* sued, then the party shall have a *Quare impedit*, and not *Quare incumbravit*; for the Bishop cannot have notice until the *Ne admittas* be delivered unto him. And if the Bishop, after the *Ne admittas* delivered unto him, do admit his

his Clerk for whom it is found by the *Jure Patronatus*, yet the other party ſhall have *Quare incumbravit* againſt him. And in *Quare incumbravit* he ſhall have Judgment to recover damages, and alſo his Preſentment. But ſo ſhall he not have in *Quare non admiſit*, but only damages. H I

And in 21 *E.* 1. it was adjudged, that a man ſhall have *Quare incumbravit* without making mention of any Recovery in the Writ, or in the Count. But by the Rule of the Regiſter he ought to mention the Recovery; and that ſeems to be the better Opinion. K

And after the *Nè admittas* delivered, if the ſix Months paſs, the Biſhop may preſent his Clerk for Lapſe, and ſhall not be charged by the *Quare incumbravit* for that Preſentation; but it ſeemeth he cannot admit the Clerk of the other man after the ſix Months paſt, for that ſhall be againſt the Writ of *Nè admittas* delivered unto him. And alſo if the Biſhop do preſent the Clerk of the other party after the ſix Months, who had preſented unto him before, that Preſentment maketh Title to the party, although it be after the ſix Months; by which it ſeemeth that the *Quare incumbravit* lieth then for the party. L

And if the Plaintiff be Non-ſuit in *Quare incumbravit*, he may ſue a new *Quare incumbravit*, and may vary from his Count upon the firſt Writ. And it is a good Iſſue, that he did not incumber, &c. after the Prohibition delivered unto him. M N

And if a man hath a *Quare impedit* depending, and he ſue a *Nè admittas* to the Biſhop, and afterwards the Biſhop do incumber the Church within the ſix Months with his Chaplain, or with the Defendants Chaplain; then the Plaintiff ſhall have *Quare incumbravit*, and the form of the Writ ſhall be ſuch. O

Rex Vic. Linc. *ſalutem. Si* A. *fecerit*, &c. *tunc ſum.* H. Linc. *Epiſc', quod ſit coram Juſtic'*, &c. *oſtenſ. quare cùm idem* A. *in Cur. noſtra coram præf. Juſtic. recuperaſſet verſus* B. *Præſentac. ſuam ad Eccleſ. de* L. *per conſ. Cur. noſtræ præd', idem tamen Epiſc', pendente Placito in præd. Cur. coram præf. Juſtic', eandem Eccl. incumbravit, in ipſius* A. *dampnum non modicum & gravamen, & contra Legem & conſuet. regni noſtri, & habeas ibi*, &c. *Teſte*, &c.

And if he do not appear at the Return of the Writ of *Incumbravit*, nor at the *Alias*, then the *Diſtringas* ſhall be in the end, *In noſtri ac mandatur noſtror. contemptum manifeſt', et conſideration. Cur. noſtræ enervationem manifeſtam: et habeas ibi*, &c. P

And if a man hath a Writ of Right of Advowſon depending betwixt him and another, and the Church void pendant the Writ, the Plaintiff ſhall not have *Nè admittas* to the Biſhop, nor the Writ of *Quare incumbravit*, although Q

the

the Bishop incumber the Church; for the Demandant shall not recover the Presentment upon this Writ, but the Advowson; and if he hath Title to present, he may present, and have a *Quare impedit* if he be disturbed.

Juris utrum.

[49.]

R *Juris utrum* is a Writ of the highest nature that a Parson can have, and he shall have this Writ where the Lands or Tenements are alienated by his Predecessor, or if a Recovery be had against the Predecessor by Default, or by Reddition, or for want of Pleading of the Predecessor, where he hath not prayed in aid of the Patron and Ordinary. But if he do pray in aid of the Patron and Ordinary, and they joyn in aid, and render the Land, or confess the Action, then the Successor of such a Parson shall not have this Writ against that Recoverees: And also if a man recover by Action tried against a Parsons Lands, or Tenements, by Verdict, and the Parson doth not pray in aid of the Patron and Ordinary, yet his Successor shall have a *Juris utrum*, and shall not be put to a Writ of Attaint.

19 H. 40. *Fortescue.* If Annuity be recovered against a Parson, his Successor shall not have *Juris utrum* upon that Recovery, for that nothing is taken out of the possession of his Successor, but a charge only upon the Successor which shall bind him.

A And if a man intrude into Lands and Tenements after the death of a Parson, the Successor shall have this Writ of *Juris utrum*: and so if a Parson be disseised of Lands and Tenements, parcel of his Rectory, and dieth, his Successor shall have a *Juris utrum*.

B And also a Parson may have an Assise of Lands or Tenements of his Rectory, or a Writ in the *Quibus*, in the nature of an Assise, or a Writ of *Entry* in the *Per*, or *Cui*, or in the *Post*, upon a Disseisin made to himself, put not upon a Disseisin made to his Predecessor, but shall be put to sue a *Juris utrum*, &c.

C Also a Parson may have a *Cessavit*, if his Tenant who holdeth of him cesseth, &c. or a Writ of Escheatry, if his Tenant die without Heir. And by the Statute of *West.* 2. he may have *Quod permittat* of common Pasture. Vide 57. a.

D And if a Parson with the assent of the Patron and Ordinary leaseth his Glebe-lands for life, and the Tenant alieneth in Fee, or loseth by Default, it seemeth the Parson who leased the Land shall have a *Consimili casu* during the life of the Tenant for life; and after the death of the Tenant for life, a Writ of *Entry ad Communem Legem*. Vide 50. H.

E And if an Abbot or Prior be Parson imparsonee of a Church, and alieneth the Land of the Rectory, his Successor shall have a *Juris utrum* to recover the Land, and not other Writ, because he shall have that as Parson.

And

And if a man leaseth Lands unto one for Life, and afterwards granteth the Reversion by Licence unto a Parson and his Successors, and the Tenant attorneth, and after the Tenant for life loseth the Land by default, or alieneth in Fee; the Parson shall have a Writ *de Consimili casu* during the life of the Tenant for life, and after his death he shall have a Writ of *Entry ad Communem Legem*, &c. F

And if a Parson lose by Action tried, or loseth by default, his Successors shall have a Writ of Error or Attaint. G

And if a Reversion be granted unto a Parson and his Successors by Licence, he shall have a *Quid juris clamat*; or if the Services of a Tenant be by Licence granted unto a Parson and his Successors, he shall have a *Per quæ servitia*: and so of a Writ of *Quem redditum reddit*, &c. H

And so if a Parson be Tenant in common of a Wood or other Land in the right of his Church with another, and the other Tenant do Waste in the Wood or Land, &c. the Parson shall have a Prohibition; and if he do Waste, he shall have a Writ of Partition, and the place wasted shall be assigned to the other party by the Statute of *West.* 2. cap. 22. But if a Parson be Patron of a Vicarage, and the Vicarage void, and a Stranger both present, the Parson shall have a *Quare impedit*, or *Darrein Presentment*: But if the six Months pass, he shall have a Writ of Right of Advowson, because that that Writ is given only for him who hath the entire Fee and right in him, and the Parson hath not the same, for the right is in the Patron and Ordinary. I

Cap. 22. part 4th.

Nor shall a Parson have a Writ of Right *sur Disclaimer*, nor a Writ of Customs and Services, nor an *Intrusion vient*, nor such Writs as are grounded upon the meer Right. But it seemeth he may have *Contra formam Collationis*, or *Fraus-sumsit*, and a Writ of *Mesne* and *Ad terminum qui præteriit*, &c. and such possessory Writs which are not grounded upon the meer Right. K

20 E. 3. Juris utrum &c. Old N° 325. contr.

And a Parson or a Vicar shall have a Writ of *Juris utrum* against those who are several Tenants; and then the form of the Writ shall be such: L

Rex Vic. S. salutem. Si L. Episcopus de Land', Parson. Ecclesiæ de L. fecer. te secur' &c. tunc summ. xii. liber' &c. de visn. de L. quod sint coram Justic. nostris apud West. tali die, &c. parati sacrament. recogn', utrum xx. acræ terræ cum pertin. in L. sint libera Eleemosyna pertin. ad Ecclesiam ipsius L. an Laicum, feod. A. B. C. & D. & unde inde sil. videant. Et sum', &c. quod A. qui duas acras inde tenet, B. qui octo acr. inde tenet, C. qui quinque acr. & unam rodam inde tenet, & D. qui quatuor M

acr.

aut terrâ & tres redue inde tenet, quid tunc sint, &c.

C And two Prebendaries may be one Parson in one Church, and then they shall joyn in a *Juris utrum*; and their Writ shall be such:

Si W. Prebendarius Prebendæ de N. & R. Prebendarius Prebendæ de L. in Ecclesia beati Petri Eborac', *Person. Ecclesiæ de A. prædictis Prebendis annexæ fecerint, &c. tunc summ. xii, &c. ut supra.*

P And where a man is Parson of the moiety of the Church, and another Clerk is Parson of the other moiety of the same Church, then one may have a *Juris utrum*, and the Writ shall be such:

Si W. Person. medietatis Ecclesiæ de N. fecerit, &c. tunc summonit. &c. sacramento recognosc. utrum, &c. sit libera Elemosyn. pertin. ad medietatem ipsius W. Ecclesiæ prædi', an libera Elemosyn. pertin. ad alteram medietatem R. *Person. alterius medietatis Ecclesiæ prædi', &c.* And Dean and Chapter may have *Juris utrum* in special case where they are Wardens of a Chauntry, thus:

R . *Rex Vic. Lond. salut. Si Decanus & Capitulum Ecclesiæ S. Pauli London', Custodes Cantariæ ad Altare beatæ Mariæ in Ecclesia Sancti* Pauli *Lond', pro animâ* Ric. D. *ordinat', fecerint vos secur', &c. tunc sum', &c. de visu. vestro Lond', quid sint coram Justic. nostris apud* Westm. *tali die, &c. utrum xx. solid. redditus cum pertin. in suburbio* London. *sint, &c. pertin. ad Cantariam ipsorum Custod. ad Altare prædi', an Laicum feod', &c. & interim Tam. unde redditus, &c. Teste, &c.* [50.]

A Where a Parson alieneth the right of his Church with Warranty, and afterwards the Alignee is impleaded, and voucheth the Parson, who entreth into the Warranty, and loseth by Action tried, his Successors shall have a *Juris utrum* of the Seisin of his Predecessor which he had before

B the Alienation. And a Vicar shall have a *Juris utrum* against the Parson for the Glebe of his Vicarage, which is parcel of

C the same Church. If a Parson receive Rent or Fealty of the Tenant of the Land which is alienated by his Predecessor, he shall not during his life have a *Juris utrum*, but his Successors shall have *Juris utrum*.

D If a Writ of Right be brought against a Parson, who joyneth the Mise without praying in aid of the Patron and Ordinary, and afterwards loseth by Default, his Successor shall have *Juris utrum*. Otherwise it is if he loseth the Land by Verdict, as it seemeth.

E If a Parson have a Chappel annexed to his Parsonage, to which Chappel Glebe is appurtenant, the Parson shall have *Juris utrum* of the same.

40 E. 3. 27. 2 H. 4. 2. Quare 11. H. 4. 17. 11 E. 3. Juris utrum 19. 7 Eliz. Dyer 219. 240. 22 H. 8. B. accept 14. 2 E. 6. B. accept 20.

A

A Recovery in a *Cessavit* against a Parson by Default shall F not bar his Successor, but he must have a *Juris utrum* against him who recovered.

If the Chaplain of a Chauntry lose the Lands of his Chaun- G try by an Assise of *Novel disseisin*, yet he himself shall have a *Juris utrum*, because that that is his Writ of Right; and the Writ is to enquire, *Utrum sit libera Elemosyna Cantariæ, an Laicum feodum*, &c. *H.* 1. *R.* 2.

1 E. 1. *Quod permittat* 9. 32 E. 1. Comment. 24.

The Parson or Vicar shall have a *Quòd permittat* in the H *debet* only of his own Seisin or of the Seisin of his Predecessor; and may have that *Quòd permittat* in the nature of an Assise of *Mortdaunceſtor*, upon the dying seized of his Predecessor.

In a *Juris utrum* the Plaintiff ought to be named Parson or Vicar, or such name in right of which name he bringeth I his Action: for if an Abbot, or a Bishop, or a Dean, bring a *Juris utrum*, by reason of Land which is parcel of the Rectory annexed to the Bishoprick, or appropriated unto the Abby or Deanry, they ought to be named Parsons of the Church in the VVrit.

In a *Juris utrum*, if the Tenant at the first day do make K Default, Re-summons shall be awarded; and if he make Default again at the Summons returned, then the Jury shall be taken. And the Tenant shall plead in a *Juris utrum*, L as the Tenant shall plead in Assise of *Novel disseisin*, *scil.* two or three Dilatories to the VVrit; and if it be not found, then to pray the Jury to enquire of the points of the VVrit. M

And where the *Juris utrum* is brought against several Te- nants by several Summons in the VVrit, it may be taken a- gainst one only for that parcel, and afterwards against the others. But it is otherwise in an Assise of *Novel disseisin*, if it be not in special cases.

Writ of Consultation.

See the Statute *de circumspectè agatis*, 13 E. 1. *Rastall* Prohibition 3.

IF the Bishop cite any of the Parishioners of the Church to N be contributary unto the reparations of the Parish-Church, or of any Chappel annexed thereunto, if the party who sueth the Prohibition directed unto the Bishop suppose that he is impleaded of a Lay Fee in the Spiritual Court, the Bishop shall have a Consultation upon the matter shewed in the Chancery on the part of the Bishop.

37 H. 6. 9. Assize.

And so if a man obtain any Judgment or Sentence in the O Spiritual Court for a Legacy of Money, or other Chattels, if the Executors will sue a Prohibition for to delay the Execu- tion of the Judgment, the party shall have a Consultation.

And

P And if any Chaplain of the King's free Chappels keepeth any Concubine, then the Bishop may cite him before him for to punish him: and if the Chaplain Purchase a Prohibition, because the Kings free Chapels ought not to be visited by the Bishop, yet upon the matter shewed, the Bishop shall have a Consultation to proceed to correct him by pain corporal, and not pecuniary.

Q If a Prior and Covent sue in the Spiritual Court for Tithes and Mortuary, *J.* Parson of the Church of *C.* and an Abbot cometh into the Chancery, and surmiseth that *J.* holdeth the Church of his Patronage, and that the Prior, &c. claimeth the third part of the Church of his own Advowson and Patronage, and prayeth an *Indicavit*, and the same is granted; now the Prior &c. may shew this matter in the Chancery, and have a Consultation, because that in the Statute of *Articuli Cleri* it is contained, that in Dismes and Mortuaries, when unde these names they are proposed, there is no room for our Prohibition. See Articuli Cleri, cap. 1.

R If a Prior sueth in the Spiritual Court for the moitty of the Tithes of four Plough-lands, which he claimeth as appertaining unto his Church of *N.* whereof he is a Parson imparsonee, which are not of the value of the fourth part of the Church, If the other purchaseth an *Indicavit*, surmising that they are of the value of the fourth part; he who is sued in the Spiritual Court shall have a Consultation to proceed, *dummodo non agitur de Advocatione alicujus partis Ecclesiæ, dicta Prohibitione non obstante.*

S If a man promise unto another with his Daughter in Marriage 10 *l.* by reason whereof the party marrieth his Daughter, if he who promiseth the money will not pay the money, he shall be sued for the same in the Spiritual Court; and if he purchase a Prohibition, the other shall have a Consultation: and if he who promised the money dieth, yet the Husband who married his Daughter may sue the Executors for that money, or the Executors of his Executors, in the Spiritual Court. Vide 44. a. 14 E. 4. 6. 17 E. 4. 6. Com. 309. 20 E. 4. 3. [51.]

A And if any of the Parishioners do disturb any Parson or Vicar to carry his Tithes by the usual ways and passages, the Parson may sue in the Spiritual Court for this Disturbance; and if the other sue a Prohibition, upon the matter shewed he shall have a Consultation.

B If a Parson or Vicar have a Pension out of another Church, and the Pension is kept from them, or another Parson taketh and claimeth the same; the Parson or Vicar who ought to have the Pension may sue for the same in the Spiritual Court.

And so if a Parson, or Vicar, or Master of an Hospital, sue for a Pension in the Spiritual Court, which they and their Predecessors have had time out of mind, &c. if the other party purchase a Prohibition upon the matter shewed, he shall have a Consultation: and yet it seemeth, that upon the Prescription he may maintain a Writ of Annuity at the Common Law, but the same is in his election. But if he once sue a Writ of Annuity at the Common Law for the same, and declare there upon the Prescription, then he shall not afterwards sue in the Spiritual Court for that Annuity in the name of a Pension; and if he do, it seemeth the party may have a Prohibition against him.

31 H. 6. 19. And a Parson may sue in the Spiritual Court a Spoliation against another for taking of his Tithes, or for taking of any Pension which doth appertain to his Church, although they claim by several Patrons and of their several Presentments: But this is intended only where the Tithes and profits taken and spoiled do not amount unto the Vide 36. A. fourth part of the value of the Church; for if they claim by several Patrons, and the Tithes, profits or Pension amount unto the fourth part of the Church, then the party grieved shall have an *Indicavit*, because the Title of the Patronage doth come in debate, &c. But if they claim by one and the same Patron and of his Presentment, then one Parson shall have a Spoliation in the Spiritual Court against the other, although the profits do amount unto a fourth part, or a third part, or the moiety of the Church, because the Title of Patronage comes not in debate; and if a Prohibition be sued thereupon, the party shall have a Consultation. C

12 H. 6. 19. For where the Tithe of the Patronage is in question, there is no Spoliation.

If a man have his Sheep lying and feeding for one year in a Parish, the Parson of the Parish may sue in the Spiritual Court for Tithe of Wool of those Sheep; and if the party sue a Prohibiton, he shall have a Consultation.

And note, that Consultation shall be granted and directed to the party himself who useth in the Spiritual Court, that he do not proceed in his Suit there; and also he may have a Consultation directed unto the Judge, commanding him to proceed there, notwithstanding the Prohibition aforesaid.

And the Parson may sue the Executors of his Predecessor in the Spiritual Court for the Dilapidations, and for the sum of money which is found by the Enquest charged by the Bishop or Ordinary, that the Dilapidations do amount unto, to pay the same: and if the Executors sue a Prohibition, the party who sued in the Spiritual Court shall have a Consultation directed to the same, &c. to proceed; and

another

another Consultation directed to him to sue as before.

G And if a man doth detain his Tithes for his Sheep, which are in the Parish, and there feeding for half a year, if he die, the Parson may sue his Executors for these Tithes in the Spiritual Court, and shall have a Consultation, if the Executors sue a Prohibition. And the Parson by Prescription may claim the Tithe of Calves and Kine, and Milk of Cattel feeding in the Parish, from the feast of the holy Trinity, unto the feast of Saint *Peter*, which is said *ad vincula*; & *Decim. Lan. provenientis de Ovibus Parochianorum suorum, occisis & mortuis à festo S. Mich. usque ad festum Paschæ singulis annis; & Decimas Mellis & Ceræ provenient. de Apibus & alveis. Apum infra limites Parochiæ suæ*; and may sue for them in the Spiritual Court, and shall have a Consultation, if he be disturbed by Prohibition.

H And a man may sue in the Spiritual Court for a Legacy: where a man deviseth *fabricæ Ecclesiæ* 20. l. &c. the Parson may sue the Executors for the same in the Spiritual Court, &c. and may sue the Executors in the Spiritual Court for the Tithes of Mills due by the Testator in his life-time. And so a Vicar may sue in the Spiritual Court for the Tithe of Beans and Oats, arising within certain limits within his Parish. And so he may sue *pro Decimis panagii provenientibus de boscis suis; & pro pullanis provenient. de equitio suo; & pro Butyro, Caseo, & Lacticinio, tempore hyemali.* But it seemeth the same ought to be by Prescription. And it was agreed before the King's Council in the Parliament holden at *Salisbury, quòd Consultationes fieri debeant de silvis cæduis, eo non obstante quòd non renoventur per annum.*

A man may sue in the Spiritual Court, where another man doth defame him as a Falsifier, an Adulterer, or an Usurer, &c. 27 H.2.13.

K And a Parson or other Priest may sue in the Spiritual Court, for laying violent hands upon him, &c. to have him Excommenge, or to have corporal punishment, but not to have amends there. 12 H.7.13. per *Constable.* 11 H.4.38.

L Where a Prior sueth a Parson in the Spiritual Court *Pro duabus partibus Decimarum provenient.* of the demeans of *F.* whereof the Parson hath spoiled the said Prior, for which the Parson purchaseth an *Indicavit* in the Chancery, surmising that the Tithes do amount unto the fourth part of the value of his Church, and that the King is Patron thereof, by reason of the Wardship of an Infant in the King's hands, by reason whereof the Prior cometh into the Chancery, and sheweth there that the Tithes do not 7 H.4.1. [52]

amount unto the fourth part of the value of the Church, and hath a Writ directed unto the Bishop to certifie the King into the Chancery the value of the Church which the Parson holdeth, and the value of the Tithes demanded by the Prior: if the Bishop by his Letters certifie for the Prior, then the Prior shall have a Consultation. And so it seemeth by this Writ, that where an *Indicavit* is sued, &c. the King shall be certified by the Bishops Letters upon a Writ directed to the Bishop, what is the value of the Church, and also what is the value of the Tithes demanded in the Spiritual Court, before a Consultation shall be granted: and it seems to be a good Rule and a good Order, so as no party shall be deceived: and this Certificate of the Bishop shall bind the party to say or aver any thing against it. But a Consultation shall be granted upon the Certificate returned, &c. but notwithstanding that, if it be unto the fourth part of the value of the Church, the party may sue a Writ of Right of Tithes, &c.

11 H.4.34. So if the Bishop certifie that J.S. is utlage, or in prison at the time of the utlagary. 15 E.3. utlagary 2. Brev. Estoppel 211.

If a Bishop make an Order, that the Parson of such a Church shall yearly pay unto the Abbot of *B.* and his Successors two parts of the Profits of the Church in the name of a yearly Pension, and that the Parson before he have possession of the Church take an Oath so to do, for which the Parson sueth in the Court of *Rome*, and obtaineth a Delegacy directed unto the Bishop and his Officers, to repeal the Order, &c. now if the Abbot sueth a Prohibition upon this matter the Parson shall have a Consultation. A

If a Lay-man will not make his Offerings at days limited to the Parishioners to offer, or will not confess himself unto his Curate, or receive the Sacrament of our Lord Jesus Christ of his Curate, by reason whereof the Curate citeth and sueth him in the Spiritual Court for the same: if he purchase a Prohibition, &c. upon shewing the matter, a Consultation shall be granted. B

See for their capacity at the Common Law, 11 H.4.12. 7 H.6.30. 12 H.7.27. 2.E.4.6. 12 H.7.22.

If the Churchwardens of any Church have used time out of mind to receive yearly of one of the Tenements of the Parish a pound of Wax to maintain the Taper before the Crucifix in the Church, and he who is now Tenant of the Tenement refuseth to pay this Wax, &c. there the Churchwardens may sue in the Spiritual Court for the same: and if he obtain a Prohibition, Consultation shall be granted. C

If a man be condemned in the Spiritual Court in a Cause of Defamation, for which he appealeth unto the Court of Canterbury, &c. and there the Sentence is confirmed, and the party condemned in twenty shillings for D

costs,

coſts, and the Cauſe remitted unto the Judges before whom it was firſt commenced, by reaſon whereof he who is condemned ſueth a Prohibition; the other party ſhall have
E a Conſultation. If a Parſon doth detain from the Pariſhioners the Goods of the Church, and in his Will he enjoyneth his Executors to deliver them unto the Pariſhioners; the Pariſhioners may ſue the Executors in the Spiritual Court for them, and if they ſue a Prohibition the Pariſhioners ſhall have a Conſultation, and this Conſultation may be ſued by
F any of the Pariſhioners who will ſue in the Spiritual Court. If the Biſhop or his Official cite any man for laying violent hands upon any Clerk, &c. if he ſue a Prohibition, the other See 51. K
may have a Conſultation; *Dummodo agitur ad ſummum ſuppli-cium, & non pecuniarium, &c.*

G If a man in time of the Vacancy of a Parſonage or Vicarage will not pay his Tithes, and the Ordinary *ex officio* cite him to pay them, &c. if he purchaſe a Prohibition, the other ſhall have a Conſultation granted unto him.

H If an Abbot and Covent are bounden, by reaſon of any Ordinance lawfully made, to find four Chaplains to ſing in ſuch a Church or Chapel for the ſouls of ſuch or ſuch, and if they fail to find them, they bind themſelves in divers pains and cenſures, and if they fail in all or in part to find theſe Chaplains, they have granted that the Dean of *Salisbury* or his Official ſhall interdict their Church, and ſo hold it until they have ſatisfied, &c. for which the Dean or his Official, *ex officio*, cite the Abbot and Covent to find the ſaid Chaplains, &c. if they ſue a Prohibition, the Dean or Official ſhall have a Conſultation in that caſe.

I If the Ordinaries do forbid the Friers, that they ſhall not hear Confeſſions, nor they ſhall not admit any one to be buried in their Church, and ſue them in the Spiritual Court for that cauſe; if the Friers purchaſe a Prohibition, the Ordinaries ſhall have a Conſultation.

K If a man ſueth in the Spiritual Court for taking and detaining from him his Wife lawfully married unto him, if the other ſue a Prohibition for the ſame, he ſhall have a Conſultation, foraſmuch as for reſtitution of his Wife only he ſueth, &c. And yet he may have an Action at the Common Law, *De Uxore abductâ cum bonis viri*, or an Action of Treſpaſs for taking the Wife as it ſeemeth. See 51. I

L And a Parſon ſhall ſue for a Penſion of forty ſhillings in the Spiritual Court, whereof the Houſe hath been ſeiſed time out of mind, and ſhall have a Conſultation thereupon, if a Prohibition be ſued, &c.

If a man recover in the Spiritual Court in a Cause of Defamation costs, he shall sue there for the costs, and if the other sue a Prohibition, he shall have a Consultation. M

[53] 13 H. 7. 22. And if a man have corporal punishment in the Spiritual Court for a Cause of Defamation, or for laying of violent hands upon a Clerk, &c. if the party will redeem his Penance, and promise to pay unto the party a certain sum for his Damages, &c. if after he will not pay the money unto the party, the party damnified may sue for the same in the Spiritual Court; and if the other party purchase a Prohibition, he shall have a Consultation. A

If a Parson for an offence have Judgment to be deprived in the Spiritual Court, and the Patron doth present another Parson unto the Ordinary, who sueth the first Parson in the Spiritual Court because he will not void the Church, but defend himself by Appeals or other matter, &c. now if the first Parson purchase a Prohibition, the other may sue a Consultation; or without any Prohibition sued by the first Parson, the Parson may sue a Writ in the Chancery unto the Spiritual Judge, to proceed in the Spiritual Court upon the Cause of Deprivation and Disability. B

Upon a Legacy given to any Order of Friers, they may sue the Executors in the Spiritual Court for the same. And if the Executors purchase a Prohibition, they may have a Consultation upon the matter shewed, &c. C

If Friers, or other persons whatsoever, sue in the Spiritual Court for a Legacy, and have Process against others as Witnesses in that Cause; if the Witnesses will sue a Prohibition surmising that they are sued against their wills, *ex officio fadoris*, in the Spiritual Court, &c. yet he or they to whom the Devise is made shall have, upon the matter shewed, a Consultation. D

And note that the Justices of the King's Bench may grant a Consultation of Tithes as well as the Chancellor. And when the Justices grant a Consultation of Tithes of Spoliation, they make the Libel indorsed in such manner.

Dimittat Rex hos Actor cognoscendos Coram Ecclesiastic. de Spoliatione Decimarum, quatenus de Jure Patronus seu de Absolutione Decimarum non agatur. And so they give no power by the Indorsment, and the Rule in the Register is by those words.

Note, that the Justices said, That Tithes shall not be but of such things which increase from year to year, and that by the manure of man: but that is against the Decretals. I

And

F And all the Juſtices are againſt a Conſultation in a Cauſe of Defamation, becauſe, it ſeems, he may have his Action at the Common Law for the ſame Defamation. 27 H.8.13. 21. Br. Conſultation 7.

G Alſo of Coals, or of Quarries, or the like, a man ſhall not pay Tithes, nor of Agiſtment, becauſe that he payeth Tithes for the Cattel which feed in the Paſtures. Register 51. Br. Defmes 18.

H And alſo they ſay, that properly a Conſultation ought not to be granted, but in caſe where a man cannot recover at the Common Law in the King's Courts.

I And if the Biſhop cite a man *ex Officio* for to appear before his Officers for Fornication, &c. or ſuch like offences, and the party defendeth himſelf by Appeals, or ſuch other delays, and by ſuing a Prohibition unto the Spiritual Court, and afterwards he waves the delays, and ſubmits himſelf to the Judgment of the Spiritual Court, and they delay to proceed in theſe Cauſes for the vexation and delays, and the ſuing of the Prohibition which the party had before; then the party ſhall have a Writ directed unto the Spiritual Judges, that they do proceed *in cauſa Defamationis ad panam capiendam imponend', et in cauſa Submiſſionis, &c. Proviſo quid quicquid in præjudicium juris noſtri Regii derogation. cedere valeat aliquatenus, per vos nullatenus attemptetur.*

K If the very Patron preſent an able perſon to the Ordinary, and the Ordinary refuſeth him, and afterwards a Diſturber preſenteth unto the Ordinary another perſon unto the ſame Church, and the Ordinary doth admit, inſtitute and induct him, and afterwards the very Patron recovereth his Preſentment againſt the Diſturber; for which cauſe the preſentee of the very Patron ſueth the preſentee of the Diſturber in the Spiritual Court, to avoid and remove him; for which cauſe he ſueth a Prohibition, &c. now the preſentee of the very Patron ſhall have a Conſultation unto the Spiritual Court to proceed in that caſe, &c. But firſt the Record in the Common Pleas ought to be certified into the Chancery of the Recovery or of the Compoſition there made of the Title of the Preſentment, before the Conſultation ſhall be granted.

L If the Tenants or Poſſeſſors of any Lands or Tenements within any Pariſh have uſed to find a Chaplain to ſay Divine Service in the Pariſh Church, &c. time out of mind, &c. and afterwards they withdraw, and will not find ſuch Chaplain, &c. then the Parſon and Pariſhioners ſhall ſue againſt them in the Spiritual Court, for to find ſuch Chaplain in the Church: and if the Tenants or Poſſeſſors of the Land ſue a Prohibition upon the matter ſhewed in Chancery, the

Parſon and Pariſhioners ſhall have a Conſultation to proceed, and by ſuch words: *Vobis ſignificamus, quod in cauſa illa quatenus ad Cantariam præd. ad priſtinum ſtatum, &c. & ad debitam punitionem occaſione ſubtractionis hujuſmodi eidem, &c. imponend. per vos agitur, licitè procedere, & ulteriùs facere poteritis quod ad forum Eccleſiaſticum noverit pertinere, dictâ Prohibitione noſtrâ, ſeu aliqua alia vobis in cauſa præd. impoſterum dirigend', non obſtante, &c.*

And if it be after time of memory, *viz.* in the time of *R.* 1. and before the Statute of *Mortmain*, the Parſon and Pariſhioners ſhall have ſuch Suit for a Chantry, &c. And if [54] a Parſon and Pariſhioners ſue one ſuch Tenant and Poſſeſſor of the Lands to find ſuch Chaplain, &c. and he ſue an Inhibition from the Court of *Canterbury*; or appeal unto the Court of *Canterbury*, or make ſuch ſubtil delays in the Court of *Canterbury*; then the Parſon and Pariſhioners ſhall have a ſpecial Writ unto the Archbiſhop and his Officers: *Quod in caſu & Proceſſu præd', coram vobis in Cur. Cant. virtute Appellationis præd' devolutis, quatenus ad Cantar. ad debitum ſtatum reducere faciend', ad debitam punitionem occaſione ſubtractionis hujuſmodi eidem, &c. imponend', & impon. faciend', & ad dictam ſententiam in ipſum latam, ſicut dedu&a fuit', in ſuo robore permanere faciend. per vos agitur, ritè procedere & ulteriùs facere poteritis, &c. dictâ Prohib. noſtrâ non obſtante.*

If a man deviſe an Ox or a Cow unto the Church for Reparations thereof, or for the Churchyard, and he who hath the Cow or the Ox will not deliver the ſame unto the Churchwardens; then the Ordinary *ex Officio*, or the Churchwardens may cite him, and ſue him for the detaining of the Cow or Ox: and if the other party ſue a Prohibition, the Churchwardens ſhall have a ſpecial Conſultation. *Vobis ſignificamus, quod in caſu præd' quatenus ad reſtitutionem eiſdem Gardianis de Legat' præd', in forma præd' ac penam Canonicam eidem imponend' pro detentione eorund', coram vobis tantùmvis agitur, licitè procedere, & ulteriùs facere poteritis quod ad forum Eccleſiaſticum, &c. Prohibitione noſtrâ non obſtante.* And if he will not proceed upon that, they may ſue an Attachment, &c.

And in many caſes a man ſhall have a ſpecial Conſultation. As, if a Parſon ſue in the Spiritual Court for Tithes of great Trees which paſs the age of 20 years, and makes his Libel by the name of *Silva cædua*; now the party may ſhew in the King's Bench, or in the Chancery, that the Trees were great Trees above the age of 20 years; and upon this ſurmiſe he ſhall have a ſpecial Conſultation, to proceed *ita*

quod

quid de cædua, and not of other Trees which are paſt 20 years growth, or the age of 20 years. And ſee the Statute for the ſame, *Anno* 45 *E.* 3. *cap.* 31.

C If a man have a Chappel within his Manor which is a donative Chauntry, or preſentable, and the Chaplain hath uſed to have the Tithes ariſing of the demeans of the Manor time out of mind, &c. now if a Parſon (in whoſe Pariſh this Chappel is) ſueth the Lord of the Manor, and alſo the Chaplain in the Spiritual Court, for the Tithes of the ſame Manor, they ſhall have a Prohibition, &c. becauſe the Advowſon of this Chappel may come unto the King by Wardſhip or Eſcheat, &c. And then the Parſon within whoſe Pariſh this Manor and Chappel is, ſhall have a ſpecial Writ of *Scire facias* againſt the Lord of the ſaid Manor, and alſo againſt the Chaplain, returnable in the Chancery at a certain day, if they can ſay any thing wherfore a Conſultation ſhall not be granted, and the Writ of Prohibition revoked and repealed; and farther to do as the Court ſhall award in that caſe. And in the end of the Writ ſhall be, *Et habeas ibi nomina eorum per quæ ei ſcire feceris, &c. & hoc Breve, &c.* Which Writ appeareth in the Regiſter, in the end of the Writs of *Scire facias*.

See Com. 472. in Mr. Bro's Caſe. Plow. commends this form of *Scire facias*; but there is another form uſed at this day.

Brevve de Vi Laica removenda.

D THis Writ *de Vi Laica removenda* lieth as well upon a Surmiſe made by the Incumbent, or by him that is grieved, &c. without any Certificate thereof made in the Chancery by the Biſhop, as upon a Certificate thereof made in the Chancery by the Biſhop.

Old Na. Br. 11. *cont.* and *Marrow* in his Reading.

E And when the Biſhop makes Certificate into the Chancery of the Force; then the Form of the Writ is ſuch:

Rex Vic. Linc. ſalutem. Ad requiſition. venerabilis Patris Lincoln' *Epiſcopi, tibi præcipimus, quod omnem Vim Laicam, quæ ſe tenet in Eccleſia de L. ſuæ diœceſis ad perturbandum ipſum Epiſcopum, quo minus officium ſuum Spirituale in Eccleſia illa exercere poſſit, ſine dilatione amoveas ab eadem, &c.* And he ſhall have an *Alias*, and a *Pluries*, and an *Attachment* againſt the Sheriff, directed unto the Coroners, if he do not ſerve or return the Writs.

F And if the King do collate unto any Prebend of any Biſhop come to him by Title, and the Biſhop make reſiſtance, that the King's Preſenter cannot have the corporal poſſeſſion thereof; then the Writ ſhall be directed unto the Sheriff, and ſhall be ſuch:

Præcipimus tibi, quod omnem Vim Laicam ſeu armatam quæ ſe

ſe tenet in dicta Eccleſia, vel domibus eidem annexis, ad pacem noſtram in Com. tuo perturband', ſive dilectos nobis quos in hac parte reſiſtentes inveneris, eos per corpora ſua attachies, et in priſona noſtra ſalvò cuſtodias, ità quod eos habeas coram nobis in Offic' Sancti Hil', &c. ubicunque, &c. ad reſpondend. nobis de contemptu et reſiſtentia ſuperadict'. Et habeas ibi nomina virûm quos attachia veris, et hoc Breve. And this Writ *de Vi Laica removenda* may be made returnable or not returnable; at his pleaſure who will ſue the Writ; and it may be returned into the Common Pleas as well as into the King's Bench. G

And note, that by this Writ the Sheriff ought not to remove the Incumbent who is in poſſeſſion of the Church, whether the poſſeſſion be of right or wrong; but only for to remove the Force, and to ſuffer the Incumbent for to enjoy the poſſeſſion: and if the Sheriff do remove or would put out the Incumbent who is in poſſeſſion, the Incumbent ſhall have a Writ directed unto the Sheriff, commanding him that he do not put him out; and if he hath put him out, that without delay he make him amends: and if he do not ſo do, the party may have an *Alias*, and *Pluries*, and Attachment againſt the Sheriff. And the form of the Writ *de Vi Laica removenda*, without the Certificate is ſuch: [55]

Rex Vic. S. ſalutem. Præcipimus tibi, quod omnem Vim Laicam, ſeu etiam armatam potentiam, quæ ſe tenet in Prebenda de E. in Eccleſia de C. ad pacem noſtram perturband', ſive dilectos nobis quos in hac parte reſiſtentes inveneris, in bonis poris, tuis affidat. ſervos ſuſtinent. poſſe Com. tui, ſi neceſſe fuerit, eos attachies per corpora eor', &c. ut ſuperà.

And the form of the Certificate of the Biſhop is ſuch:

Excellentiſſimo Principi & Domino ſuo, Domino Henrico, Dei gratiâ, &c. W. permiſſione divinâ Ebor. Archiepiſcopus, Angl. Primas, ſalutem in eo per quem Reges regnant & cuncta ſubſiſtunt. Celſitudini veſtræ Regiæ notum facimus per præſentes, quòd quidam, ſalutis ſuæ immemores, poſſeſſionem Domini Lin Eccleſia de C. noſtræ Dioc. nuperrimè ſibi collatæ, quam A. aliquando minùs ſcrupuloſè in noſtræ & Libertatis Eccleſiaſticæ et juris præjudicium ingreſſus impetitione et perturbant. Idcirco Excellentiæ veſtræ humiliter ſupplicamus, quatenus ad hanc vim et potiſtatem omnimodè, quam citiùs, brachium regalis poteſtatis ſolitâ gratiâ apponatis, ob injuriam Chriſti rebellibus ſic per veſtram repressam, fidelibus, ut decet, Eccleſiaſticæ ſuæ veſtr. defenſionis clypeo tuta maneat et illeſa, et vos à Deo omnibus retributionem condignam conſequi valeatis, qui ejus Eccleſiæ ſuæ & populo per tempora conſervet diuturna. Dat. apud B. quarto Kalend', &c.

Writ

Writ of Waſt.

C THe form of the Writ of Waſt againſt Tenant in Dower doth vary from the form againſt other Tenants; for the Writ of Waſt againſt Tenant in Dower is ſuch:

Rex Vic' &c. Si A. fecerit te ſecur' &c. tunc ſum. per bonos Sum. B. quæ ſint axiæ C. quid ſit datum Juſtic. noſtris apud Weſt. in quinden. Trin', oſtenſi quare fecit Vaſtum, vendition em, deſtructionem, et exilium in terris, domibus, boſcis, gardinis, et hominibus, quæ tenet in dotem de hereditate prid. A. in N. ad exhæredationem, &c. And in that Writ he doth not rehearſe the Statute which gave the Writ of Waſt, nor the Writ of Waſt againſt the Gardian, becauſe they were puniſhable at the Common Law, before the Statute, by Prohibition and Attachment thereupon, if they did Waſt. And *exilium in hominibus* ſhall not be put in the Writ of Waſt, if the Tenant in Dower or other Tenant do not miſuſe the Villains of the Manour, by reaſon whereof they depart from the Manour, or from their Tenures; and if they do, then it is Waſt. And in a Writ of Waſt againſt Tenant for life or years, he ſhall recite the Statute in ſuch form:

Rex Vic' &c. Si A. fecer. te ſecur' &c. tunc ſum. B. &c. quare cum de communi conſilio regni noſtri Angl. proviſum ſit, quod unuſquiſque alterius Vaſtum, venditionem, ſive deſtructionem faceret in boſcis, domibus, boſcis, ſeu gardiniis; idem B. de terris, domibus, et gardiniis in L. quæ prædict. A. ei dimiſit, &c. fecit Vaſtum, &c.

D And if an Abbot bring a Writ of Waſt againſt Tenant in Dower, the Writ ſhall be, *Oſtenſ. quare fecit Vaſtum in terris, &c. quæ tenet in dotem de jure Eccleſiæ ipſius, ad exhæredationem Eccleſiæ ſuæ, &c.* and ſhall not ſay *de hereditate ipſius Abbatis*, nor *ad exhæredationem ipſius Abbat'*, &c. But if the Heir bring a Writ of Waſt againſt the Tenant for life of his Anceſtors, then the Writ ſhall ſuppoſe that the Tenant holdeth *de hereditate*, &c. and that the Waſt is done *ad exhæredationem ſuam* &c. and that they have made Waſt of Lands they hold in Dower of the wife, yet the Husband doth not hold in Dower. 39 E. 3. 15. Ea 3. Ma. Dyer 129.

E And the Writ of Waſt ſhall be alwaies brought againſt the Tenant in Dower, or Tenant by the Courteſie, although they have granted over their Eſtates unto others.

F If the Husband make a Feoffment of his Land, or a ſtranger doth abate after the death of the Husband, or diſſeiſeth the Husband in his life-time, and afterwards the Wife

Wife recovereth her Dower againſt the ſtranger, &c. if he bring a Writ of Waſt againſt the Wife, the Writ ſhall make mention of the Recovery, &c. how ſhe recovered the Land againſt him. G

If a Feme hold in Dower of the King, who hath the Reverſion, and the King granteth the Reverſion in Fee unto a ſtranger, and afterwards the Feme committeth Waſt; now the Grantee ſhall have a Writ of Waſt, and the Writ ſhall make mention how ſhe holdeth of the King, and how he hath granted the Reverſion unto a ſtranger, &c. and that ſhe who held in Dower of the ſtranger of the Kings Grant hath committed Waſt, &c. So if the Husband dieth, and the Heir maketh a Feoffment unto a ſtranger in Fee, who aſſigneth Dower unto the Wife, and ſhe commits Waſt; the Writ ſhall make mention that ſhe held in Dower of the gift of her Husband by the Aſſignment of a ſtranger, of whom the aforeſaid Feme held in Dower of the Aſſignment which the Heir of the Husband hath made to the ſaid ſtranger, *ad exhæredationem* of him who bringeth the Writ. The form of the Writ of Waſt where the Wife is endowed *ex aſſenſu patris* is ſuch: H

3 & 4 Eliz. Dyer 206. 208.

Rex &c. Si S. &c. tunc ſum' &c. quæ fuit uxor R. quòd ſit, &c. oſtenſ. quare fecit Vaſtum &c. qu. tenet in dote de dono præd. R. quondam viri ſui, ex aſſenſu A. de B. patris prædicti R. de præd. S. ex aſſignatione ejuſd. A. &c. And if the Wife do recover her Dower againſt the Father, then the Writ of Waſt ſhall make mention of the Recovery thus; *Et quòd eadem Iſabella in Cur' noſtra coram Juſtic' noſtris de Banco per conſideracionem ejuſd. Cur' recuperavit, ut dotem ſuam, verſus præf. A. ad exhæred' ipſius S. &c.* And the Writ may be of Mills and Vivaries; and then the Writ ſhall be, *oſtenſ. quare fecit Vaſt. de terris, domibus, molendinis, piſcis, vivariis, & gardinis.* [55]

And if a Gardian in Chivalry grant over his Eſtate, who maketh Waſt, the Writ of Waſt ſhall be brought againſt the Grantee, and not againſt the Gardian; and it is not like Tenant in Dower, or by the Courteſie: but if the Gardian do commit Waſt, and afterwards granteth over his Eſtate, then the Heir ſhall have an Action of Waſt againſt the Gardian, and not againſt the Grantee. And ſo if Tenant for life or years commit Waſt, and granteth over his Eſtate, the Writ lieth againſt him who doth the Waſt, and not againſt his Grantee. And the form of the Writ againſt the Gardian is ſuch: *Rex &c. Si A. fecerit, &c. tunc ſum' &c. quare fecerit, &c. quæ habet vel habuit in cuſtodia de hæreditate, &c. ad exhæredationem, &c.* E

40 E. 3. 33. Finchden. 41 E. 3. 23. Candiſh. 42 E. 3. 19. per Curiam. 24 H. 8. 14, 20, 2c.

And

B And againſt the Executor of the Gardian the Writ is: *Sum' &c. B. & C. Executores Teſtamenti de, &c. quare fecer Vaſtum &c. quas habent in cuſtod. poſt mortem præd. B. dq; hared', &c. ad exhared. &c.*

C In a Writ of Waſt againſt Tenant by the Courteſie, the form of the Writ by the Regiſter is to recite the Statute; and yet it ſeemeth the Writ is good, although that he do not recite the Statute; and the form of the Writ is: 20 H. 6. 1. &c.

Rex, &c. Si A. fecerit, &c. tunc ſum' &c. quare cùm de Conſilio regni noſtri Angl. proviſum ſit, quod non liceat alicui Vaſtum, venditionem ſeu deſtructionem facere in terris, domibus, boſcis ſeu gardinis ſibi dimiſſis ad terminum vitæ vel annorum, ſeu de illis quæ per legem terr. tenent; idem B. de domibus, quas tenet per legem Angl. de hæreditate præd. A. in N. fecit Vaſtum, ad exhæredationem ipſius A. et contra formam proviſionis præd', ut dicitur. Et habeas, &c.

D And if the Heir grant the Reverſion of Tenant by the Courteſie unto another in Fee, and the Tenant attorn, &c. then the form of the Writ is ſuch:

Rex, &c. Si abbas de B. &c. fecerit &c. tunc ſum. B. &c. quare cùm, ut ſuprà, idem B. de domibus in N. quas tenet ad vitam ſuam de præf. Abbate, quas A. de quo idem B. illas tenuit per legem Angl. de hæreditate ipſius A. aſſign. inde præf. Abbati, fecit Vaſtum, &c.

And if the Heir granted the Reverſion unto another ſtranger in Fee, and the Tenant by the Courteſie doth attorn, and afterwards granteth over his Eſtate by the Courteſie to another ſtranger, and afterwards that ſtranger committeth Waſt; now the Grantee of the Reverſion ſhall have his Action of Waſt againſt the Grantee of the Tenant by the Courteſie for he cannot be Tenant by the Courteſie, if not of the Heir, &c.

E But if the Tenant by the Courteſie grant over his Eſtate unto a ſtranger, and the Grantee commit Waſt, the Heir ſhall have the Action againſt the Tenant by the Courteſie, and not againſt the Grantee who committed the Waſt. But if the Heir have obtained or granted the Reverſion in Fee, &c. and after the Tenant by the Courteſie attorn, and after grants over his Eſtate unto a ſtranger who committeth Waſt; now the Grantee of the Reverſion ſhall not have an Action of Waſt againſt the Tenant by the Courteſie, but againſt the Grantee of the Tenant by the Courteſie. And if a Feme be Tenant in Dower, and ſhe grant her Eſtate unto a ſtranger, and after the Heir granteth the Reverſion in Fee unto another, and the Tenant attorneth, and after the Tenant for term of life 11 H. 4. 13.

10 H. 4. Attornment: 16 The Attornment of Tenant in Dower is good.

life commits Waſt, it ſeemeth that the Grantee in Reverſion ſhall have an Action of Waſt againſt the Grantee of the Tenant in Dower, as he ſhall have againſt the Grantee of the Tenant by the Courteſie. The form of the Writ of Waſt againſt the Tenant for life or years is ſuch:

Rex &c. Si A. fecerit &c. tunc ſum. B. &c. Cùm de communi conſilio, &c. in terris, &c. ſibi dimiſſis ad terminum vitæ vel annorum; idem B. de terris, domibus, boſcis et gardinis in L. quæ præd. A. præf. B. dimiſit ad vitam ipſius B. Or thus, *Quæ F. pater vel mater, vel aliqu. anteceſſ. præd. A. cujus hæres ipſe eſt, præf. B. dimiſ. ad terminum annor', fecit Waſtum, &c. ad exhæredationem, &c. & contra formam proviſ. præd', ut dic': & habeas, &c.*

11 E 3. Writ. 113.

And by the Statute of *Marleb. cap.* 23. it is ordered, *Quod Firmarii, &c. non fac' Waſtum in domibus, &c. vel exile de hominibus.* By which Statute the Writ of Waſt *de Exilio hominum* is warranted, &c.

In a Writ of Waſt, if the premiſſes of the Writ recite, *Quod non liceat alicui facere Waſtum in domibus, boſcis, & gardinis*; in the end of the Writ it is ſaid, That the Def. hath done Waſt in Lands, Houſes, Woods, Gardens, and Exile of men; ſo as there is more in the end of the VVrit than is in the premiſſes, yet the VVrit is good: and ſo if leſs be in the end of the VVrit than is recited in the premiſſes, yet the Writ is good. As if it be recited, *Quod cùm proviſum ſit, quod nouliceat alicui facere Waſtum, &c. in terris, domibus, boſcis, et gardini*; and in the end it is recited, *Quod Defend. fecit Waſtum in terris* only, or *in boſcis* only, or *in domibus* only; yet the Writ is good.

[57.]

If an Abbot make a Leaſe for life or years, and dieth, and the Leſſee afterwards committeth Waſt, the Writ ſhall be ſuch: *Rex, &c. Si Abbas, &c. tunc ſum. B. Quare cùm de communi conſilio &c. idem B. de domibus in L. quas præd. Abbas, &c.* (if the Abbot himſelf maketh the Leaſe;) and if his Predeceſſor made the Leaſe, then thus; *quas R. quondam Abbas, &c. prædeceſſor præd. nunc Abbatis, præf. B. dimiſit ad vitam ipſius B. vel ad terminum annorum,* (if the caſe be ſo) *fec. waſtum, &c. ad exhæredationem Eccl. ipſius Abbatis.* And the like ſhall be for a Prior, or Maſter of an Hoſpital.

And againſt the Executors the Writ ſhall be; *Sam' I. & K. Executores Teſtamenti L. quod fint, &c. iidem Executores de terr. quas præf. A. præd' L. dimiſit ad terminum annor', fec' Waſt, &c.*

And if a man make a Leaſe to a Feme ſole of Chaſes, and ſhe take Husband, and the Leſſee dieth, and ſhe and her Husband

Husband commit Waſt; the Writ for the Heir ſhall be thus:

Rex, &c. Si A. fec', &c. tunc ſum' B. et C. ux' ejus, quod, &c. quare cum, &c. iidem B. et C. de vivariis in L. quæ tenent ad vitam ipſius C. ex dimiſſione quam F. pater præd' A. cujus hæres ipſe eſt, indè fecit præf. C. fec' Vaſtum, &c.

And another VVrit for the Heir: where Land is leaſed to Husband and wife, and the Heir, and the Husband dieth, and the wife committeth VVaſt, the VVrit ſhall be: *Eadem A. de domibus in L. quas tenet ad vitam ſuam, ex dimiſſione quam VV. inde fecit eidem A. et præf. B. quond' viro ſuo, et hæred' ipſius B. patris præd' H. cujus hæres ipſe eſt, fecit Vaſtum, &c.*

And another VVrit: when a Gift is made unto the Huſband and VVife, and unto the Heirs of the body of the VVife, and the VVife dieth, and the Husband committeth VVaſt, the Heir ſhall have a VVrit of VVaſt, and the VVrit ſhall be:

Idem A. de domibus in B. quas tenet ad vitam ſuam, ex dimiſſione quam VV. indè fec' præf. A. et M. quondam uxori ejus, et hæred' de corpore ipſius M. matris præd' B. cujus hæres ipſe eſt, exeuntibus, fecit Vaſtum, &c. contra formam, &c.

D And if a man leaſeth Lands for term of life, and hath three or four Siſters, and dieth, and they make Partition of the Lands, and of the Reverſion, and the Tenant for life committeth VVaſt; that Siſter and her Husband who hath the Reverſion ſhall have a VVrit of VVaſt and the VVrit ſhall be:

Rex, &c. Si A. de B. et M. ux. ejus, fec. &c. tunc ſum', &c. F. &c. quare cum de communi conſilio, &c. idem F. de domibus, &c. in L. quas tenet ad vitam ſuam, ex dimiſſione S. de C. de purparta ipſius M. ipſam de hæreditate ante fuit ipſius S. fratris ſui, cujus una hæred. ipſa eſt, per partitionem inter ipſas M. A. et B. ſorores ejus S. indè faltam, contin', fecit Vaſtum, &c. Or thus: *Idem F. de domibus in L. quas tenet ad vitam ſuam de præf. M. ex dimiſſione A. patris præd' M. cujus una hæred. ipſa eſt, de purparta ejuſd. M. ipſam de hæreditate præd. A. contin', fec' Vaſtum, &c.* And if Tenant for term of life grant over his Eſtate unto another, and the Grantee committeth VVaſt, the VVrit ſhall be:

E *Rex, &c. Si B. fecerit, &c. tunc ſum' A. &c. idem A. in domibus in N. quas tenet ad vitam I. ex dimiſſione quam idem I. cui præf. B. illas dimiſit ad eundem terminum, indè fecit præf. A. fecit Vaſtum, &c.* And if Tenant for term of life grant over his Eſtate, and the Grantee granteth over his Eſtate, then the VVrit ſhall be thus:

Rex

Rex, &c. Si M. *de* R. *Prebendarius Prebendæ de* F. *in Eccl. beati* Petri Ebor', *fecerit, &c. tunc ſum'* R. *&c. quare cùm, &c. idem* R. *de domibus in* L. *quas tenet ad terminum vitæ* A. *quæ fuit ux.* H. *de* N. *ex dimiſſione* M. *de* O. *qui ill. tenuit ad eundem termin' ex dimiſſione ipſorum* H. *et* A. *cui quidem* A. *et* M. *de* O. *quondam viro ſuo,* W. B. *quondam Prebendario præd. Prebendæ, prædeceſſor præd' Prebendarii, ill' dimiſit ad vitam eorund.* M. *de* O. *et* A. *fec. Vaſtum, &c. ad exheredatim. Prebend' ipſius* R. *et Contra formam proviſionis præd', &c.*

And by that it appeareth, that if a Prebendary or Parſon maketh a leaſe for term of life, he or his Succeſſor ſhall have an Action of Waſt. If M. leaſeth Lands unto I. for term of life and dieth, and L. Son and Heir of the ſaid M. granteth the Reverſion unto H. in Fee, and H. granteth this Reverſion unto A. in Fee, and afterwards the Tenant for life committeth Waſt; now the VVrit of VVaſt brought by A. ſhall be ſuch: F

30 H. 7. 5.

Rex &c. Si A. *fec', &c. tunc ſum.* L. *&c. quare, &c. id* I. *de domibus in* L. *quas tenet ad vitam ſuam de præf.* A. *ex aſſignatione* H. *de quo idem* I. *illas tenuit ad vitam ſuam, ex aſſignatione quam* L. *filius & hæres* M. *qui ill. præf.* I. *dimiſit ad eund. terminum, indè fecit eid.* H. *fecit Vaſtum, &c.*

If S. and K. his VVife ſeiſed in Fee, leaſe the Land unto *O.* for term of life, and afterwards S. dieth, and D. takes H. to Husband, and K. granteth, the Reverſion unto A. in Fee, and afterwards D. attorneth, and committeth VVaſt, and A. bringeth VVaſt, the VVrit ſhall be: G

Rex &c. Si A. *fecerit, &c. tunc ſum' &c.* B. *quòd ſit; &c. idem* B. *de domibus in* N. *quas tenet ad vitam ſuam de præf.* A. *ex aſſignatione quam* H. *et* K. *ux. ejus, quæ quidem* K. *et* S. *quondam vir ſuus, illas præf.* B. *dimiſer. ad eundem terminum, indè fecer. præf.* A. *fecit Vaſtum, &c.* If *N.* leaſeth Lands for years unto *E.* which *F.* maketh *I.* his Executor and dieth, and *I.* leaſeth the Lands unto *R.* and afterwards *N.* granteth the Reverſion in Fee to *P.* and *P.* granteth the Reverſion to M. in Fee, and after *R.* Tenant for life, committeth VVaſt; the ſaid *M.* ſhall have a VVrit of VVaſt, and the VVrit ſhall be: H

Rex Vic', &c. Si M. *fecerit, &c. tunc ſum', &c.* R. *quòd ſit, &c. quare cùm, &c. id.* R. *in domibus in* L. *quas tenet ad termin. annor', ex dimiſſ.* I. *Exec. Teſtam.* F. *cui* N. *illas dimiſit ad eund. terminum præf.* M. *ex aſſign.* P. *de quo idem* R. *ill. tenuit ad eund. termin. ex aſſign. quam præd.* N. *indè fecit præf.* P. *fecit Vaſtum, &c.* [58.]

F. leaſeth

A *F.* leaſeth Lands unto *E.* and *A.* his Wife, and unto the Heirs of *E.* and afterwards *E.* dieth, and *B.* his Son and Heir granteth the Reverſion unto C. in Fee, and afterwards *A.* committeth Waſt; the Writ ſhall be:

Rex, &c. Si C. *fecerit, &c. tunc ſum.* A. *&c. quare cùm, &c. idem* A. *in domibus in* B. *quas tenet ad vitam ſuam de præd.* C. *ex aſſign. quam* B. *filius & hæres* E. *cui & præf.* A. *quondam ux. ſuæ, F. illas dimiſit, habend. viſâ* E. *&* A. *& hær. ipſius* E. *indè fecit præf.* C. *fecit Vaſtum, &c.*

B *M.* leaſeth Lands for life unto C. and *A.* her Husband, and *A.* dieth, and C. taketh to Husband *T.* or *F.* and *T.* and *C.* his Wife leaſe the Lands unto *P.* of *F.* who leaſeth the Lands unto *I.* and afterwards *M.* granteth the Reverſion unto *R.* in Fee, and *I.* committeth Waſt, and *K.* bringeth a Writ of Waſt; the Writ ſhall be ſuch.

Rex, &c. Si R. *fecerit, &c. tunc ſum.* I. *&c. quare cum, &c. eadem* I. *in domibus vel terris quas tenet ad vitam* C. *ux.* T. *de* F. *de præf.* R. *ex aſſig.* M. *de quo* P. *de* H. *quæ ill. præf.* I. *ad terminum illum dimiſit, ill. tenuit ad eund. terminum, ex dimiſſione præ.* T. *&* C. *cui quidem* C. *et* A. *quondam viro ſuo, præf.* M. *ill. dimiſit ad vitam eorund.* A. *et* C. *indè fecit præf.* R. *fecit Vaſtum, &c.*

C *R.* leaſeth Land unto *Amice* and *J.* her Husband for term of their lives, the Remainder to *N.* Daughter to *J. D.* for term of her life, the Remainder to the right Heirs of *J. D.* and afterwards *T.* (right Heir of *J. D.*) granteth that Remainder unto *B.* of C. in Fee, and afterwards *J.* (Husband of *Amice*) dieth, and ſhe committeth Waſt; the Writ of Waſt ſhall be ſuch.

Rex, &c. Si B. *de* C. *fecerit, &c. tunc ſum', &c.* Amic', *quæ fuit uxor, &c. quare cum, &c. eadem* Amicia *in boſcis, &c. quæ tenet ad vitam ſuam de præf.* B. *de* C. *ex aſſign. quam* T. *conſ. et hæres* J. D. *de quo eadem* Amicia *illas tenuit ad eund. termin', ex dimiſſ. quam* R. *indè fecit præf.* A. *et* I. *quondam viro ſuo, ad vitam eorund.* A. *et* I. *ità quòd poſt mortem eorund.* A. *et* I. *præd. boſc.* N. *filiæ* J. D. *ad totam vitam ſuam ulteriùs remaner', et poſt mortem ipſius* N. *iidem boſci rectiùs hær. præd.* J. D. *remaner', inde fecit præf.* A. *fecit Vaſtum, &c.*

And by this Writ it appeareth, that he in the Reverſion ſhall have a Writ of Waſt againſt the Tenant for life, where there is a mean Eſtate in Remainder for life to another.

D There is another Writ of Waſt in this form.

Rex, &c. Si I. *et* C. *fec', &c. tunc ſum', &c.* I. *&c. quare, &c. eadem* I. *de omnibus, &c. quæ tenet ad vitam ſuam per Finem indè in Curia noſtra coram* W. *de* C. *et ſociis ſuis Juſtic. noſtris*

de Banco per Breve noſtrum inter præd. C. & I. & R. de P. levat', & quæ poſt mortem præd. T. & I. præf. C. & I. et hæred. de corpor. eorund' I. et C. exeunt', remanere debent per formam Finis præd', fecit Vaſtum, &c.

And a man leaſeth Lands for term of life unto *E.* the Remainder to *M.* for life, and afterwards granteth the Reverſion in Fee to one *B.* Father of *R.* whoſe Heir the ſaid *B.* is; and afterwards the firſt Tenant for life dieth, and the Tenant in the Remainder entreth, and committeth Waſt; now the Writ ſhall be: E

Rex, &c. *Si R. fec'*, &c. *tunc ſum'*, &c. I. *de C. et M. ux. ejus*, &c. *quare cum*, &c. *iidem* I. *et* M. *in terris quæ tenent ad vitam ipſius* M. *de præf.* R. *ex aſſign. quam* I. *de C. quæ terram præd'* I. *de* E. *ad totam vitam ſuam, ità quòd poſt mortem ipſius* I. *de* E. *eadem terra præf.* M. *ad totam vitam ſuam habend. remanet', dimiſit, inde fecit* B. *patri præd.* R. *cujus hæres ipſe eſt, fecer' Vaſtum*, &c.

And thereare other forms of Writs in the Regiſter which F are not mentioned here for the length of them; *ideo quære librum.*

3. H. 6. 2. Nota. And there is another form of Writ of Waſt for the Lord G by Eſcheat, who hath the Reverſion by Eſcheat, &c.

And there is a Writ of Waſt in the Regiſter for him in H the Reverſion againſt Tenant by *Elegit* who hath Lands and Tenements in Execution for Debt or Damages. And ſo againſt Tenant by *Elegit* who hath Lands in Execution by Recognizance of Debt: and alſo againſt his Executors who hath Lands in Execution by *Elegit*. And it ſeemeth to ſtand with good reaſon that the Action doth lie.

21 E. 3. 3. & 27. contr. 16 E. 3. Weſt. 100. contr.

But ſome ſay, that he againſt whom the Execution is ſued ſhall not have an Action of Waſt, becauſe he may have a Writ of *Venire facias ad computandum*, &c. and there the Waſt ſhall be recovered in the Debt; but by the Action of Waſt he ſhall recover treble damages, and ſo it ſeemeth he ſhall not do by that Writ of *Venire facias ad computandum.*

And alſo if a man hath Lands in Execution by *Elegit*, and afterwards he in the Reverſion granteth the Reverſion unto a ſtranger in Fee; that the Grantee ſhall have an Action of Waſt againſt the Tenant by *Elegit* ſeems reaſonable; becauſe the Waſt is to his diſinheritance, and he ought not to ſatisfie the Debt due by the Grantor.

And ſee 21 *E.* 3. in Title *Sc. facias*, whether Recogniſor I had a *Scire facias* upon his Surmiſe that the Recogniſee had levied all the Debt by cutting of Trees,

If a man have Common of Eſtovers in the Woods of another

another, and he who is Tenant and Owner of the Wood cutteth down all the Wood, he who ought to have the Eſtovers ſhall not have an Action of Waſt, but ſhall have an Aſſiſe of his Eſtovers: for the Action of Waſt doth not lie but upon a Leaſe made, or againſt Tenant by the Courteſie, or Tenant in Dower, or Gardian. [59]

Note, 12 H. 4. 1. per *Hankford*, in a Writ of Waſt the Writ doth not recite the Statute, which proves that a Prohibition was againſt the Gardian at the Common Law;

A If Gardian in Chivalry commit Waſt, the Heir ſhall have an Action of Waſt as well at full age as within age,

And if a man be in Ward unto the Lord by reaſon of the Uſe of Lands, becauſe that certain perſons were ſeiſed in Fee of the Lands holden by Knights ſervice unto the uſe of his Father and his Heirs; now if the Gardian commit Waſt, the Heir within age, or of full age, ſhall have the Action of Waſt againſt the Gardian, and yet the Heir hath not the Reverſion of the Lands, but the Uſe only. But that is given by the Statute of 4 *H.* 7. *cap.* 17.

And if the Gardian do commit VVaſt, he ſhall loſe the VVardſhip; and if the VVardſhip be not ſufficient to anſwer the Damages for the VVaſt, then he ſhall render Damages unto the value over and above the loſs of the VVardſhip, by the Statute of *Glouceſter*, *cap.* 5.

If the King commit the VVardſhip of the Heir in VVard unto another, and the Committee doth VVaſt; then upon a Surmiſe made thereof in Chancery, the King ſhall ſend a VVrit unto the Eſcheator, to go to the Land, and ſee if VVaſt be done, and to certifie the King thereof in the Chancery.

B If Eſcheators do commit Waſts in Lands which they have in their hands in cuſtody; the Heir within Age, or of full age, ſhall have an Action of VVaſt, and ſhall recover treble damages againſt them, and they ſhall ſuffer impriſonment two years at the leaſt, at the King's pleaſure. And ſo if Eſcheators do commit VVaſt in other Lands ſeized into the King's hands by Enqueſt of Office. *Anno* 36 *E.* 3. *cap.* 13.

C And Eſcheators, or other Gardians of Lands, in the Vacation of the Temporalties of Biſhopricks or Abbies, ſhall do no VVaſt, &c. *Anno* 14 *E.* 3. *pro Clero*, *cap.* 4 & 5.

And if Tenant for term of life, or in Dower, or by the Courteſie, or for years, grant over their Eſtate unto divers unknown perſons, &c. to defraud him in the Reverſion, and afterwards VVaſt is committed; he in the Reverſion ſhall have an Action of VVaſt againſt the firſt Tenant who took the Profits, &c. *Anno* 11 *H.* 6. *cap.* 5.

D There is another Writ of Waſt which lieth betwixt two Tenants in common of Lands or a VVood in Fee-ſimple, and the form of the Writ is ſuch:

Rex, &c. Si A. fecerit, &c. tunc ſum', &c. B. oſtenſ. quare cum idem A. et B. tenuant boſcum de I. in N. pro indiviſo, prad. B. de eodem boſco fecit Vaſtum, &c. ad exheredationem ipſius A. &c. Et habeas ibi, &c. And this Writ lieth as well of Lands, Piſcary, Turbary, and the like, as of Woods when they are holden in common. See the Statute of *Weſt.* 2. *Cum duo vel tres, &c. turbariam, cap.* 22.

The Heir within age ſhall have an Action of Waſt a- E
gainſt the Gardian in Socage.

The Heir at full age ſhall have an Action of Waſt a-
gainſt the King's Committe, &c.

22 H. 6. 25. *Newton ac.* If two have a Reverſion unto them, and unto the Heirs F
of one of them, they ſhall joyn in an Action of Waſt a-
gainſt Tenant for life.

21 H. 6. Waſt 9. The Gardian in Socage ſhall not puniſh Waſt done by a G
ſtranger.

46 E. 3. 17. Waſt ſhall be brought againſt Tenant for life, where there H
is a Meſne Eſtate for years between the Tenant for life and him
in the Reverſion.

41 E. 3. 16. 50 E. 3. 4. 10 E. 4. 9. *Chaig contr.* And it appeareth by the Regiſter, that the Writ of Waſt ſhall be maintainable, although the Meſne in the Remainder for term of life be between the Tenant for life and him in the Reverſion.

41 E. 3. 22. *Talk.* 2 H. 4. 3. *Old. Na. Bre' 36.* Where a Leaſe is made unto the Husband and Wife for I
life or years, there the Wife ſhall not be puniſhed after the death of her Husband for Waſt done by the Husband. *M.* 3 *E.* 3.

4 E. 3. Waſt 22 cont. 7 H. 6. 38 ac. The Tenant may cut Trees to mend Houſes, &c. and to K
do Reparations. But if Houſes decay by the default of the Tenant, to cut Trees to amend them is Waſt.

40 Aſſ. 22. Where Waſt is done by the King's Enemies, or by Tem- L
peſt, the Tenant ſhall not be puniſhed for the ſame.

20 E. 3. Waſt 32. Cutting of dead Wood is not Waſt. And if a man cut M
Wood to burn, where he hath ſufficient dead Wood, it is VVaſt.

2 H. 6. 11. Alſo it is not Waſt to ſuffer Lands to lie freſh, and not to manure them, and to ſuffer them to grow full of Thorns, &c.

7 H. 6. 38. 40 E. 3. 25. Alſo it is not Waſt to fell ſeaſonable Wood, which is uſed to be felled every twenty years, or within that time.

9 H. 6. 66. 22 H. 6. 12. If a man fell Trees, it is Waſt: and if he ſuffer the Germins upon the Roots of the Trees to be again newly deſtroyed, the ſame is new Waſt.

20 H. 6. 1. And if a man do not repair the Banks, by reaſon where- N
of the Land is drowned, the ſame is VVaſt,

And

And if a man plough Meadow, &c. it is VVaſt. A VVall or Pale, which is covered with Thabe or Timber, may be VVaſt, if the Tenant ſuffer them to be uncovered, by reaſon whereof, &c. And the digging of Gravel, or Stone, or Coals, ſhall be ſaid VVaſt. 15 H. 3. Waſt 131. 20 H. 6. 1. 22 H. 6. 24. 36 H. 7. ac.

Houſebote, Haybote, and Firebote, do appertain unto a Termor of common right, and he may take VVood, for the ſame. *H.* 21 *H.* 6.

O A Biſhop, or a Maſter of an Hoſpital, or a Parſon, ſhall not puniſh waſt done in the time of their Predeceſſors. But an Abbot or Prior ſhall. See 57 E.

P Tenant in Tail, after poſſibility of Iſſue extinct, ſhall not be puniſhed for VVaſt.

A Cutting down VVillows in the ſight of the Mannor is adjudged VVaſt. *P.* 40: *E.* 3. [60]

B Leſſee for life, the Remainder in Tail, the Remainder in Fee unto the Leſſee for life, if he do commit VVaſt, he ſhall be puniſhed by him in the Remainder in Tail; and yet the Leſſee for life hath the Remainder in Fee, but there is a Meſn Eſtate of Inheritance, &c. 50 E. 3. 3.

C If a man cut Trees of the value of 3 *s.* 4 *d.* it hath been adjudged VVaſt. 14 H. 4. 11: 38 E. 3. 7.

D If a man maketh a Leaſe for one year, or half a year, and the Tenant do VVaſt, the Leſſor ſhall have VVaſt, and the VVrit ſhall ſay, *Quæ tenet ad terminum annorum*, and in the Court he ſhall ſhew the ſpecial matter. Graunge to the value of 40 *s.* Waſted and yet no Waſt ſay they.

E A Termor may cut the Under-wood, growing under the great VVoods and tall VVoods; but if there be not any tall Wood, then he cannot cut the Wood. *P.* 41 *E.* 3.

F And a man may have Action of Waſt, and Count upon divers Leaſes. *M.* 44 *E.* 3.

G The Gardian ſhall not be puniſhed for Waſt done by a ſtranger, &c. but a Termor ſhall, &c.

H If Tenant in Tail leaſeth the Lands for his own life, he ſhall have an Action of Waſt againſt the Tenant, if Waſt be done.

I The Grantee by Fine of the Reverſion ſhall not have a Writ of Waſt againſt the Tenant before the Tenant attorn: but if a Reverſion eſcheat unto the Lord, he ſhall have Waſt againſt the Tenant without Attornment. Lit. 131.

And ſo if the King grant the Reverſion by Letters Patents, the Grantee ſhall have Waſt without Attornment. 34 H. 6. 51.

And ſo if a man deviſeth the Reverſion unto another in Fee, upon Waſt done, the Deviſee ſhall have Waſt without Attornment. 6 E. 3. 17. Attorn. 13. 12 E. 4. 3.

K And none ſhall have an Action of Waſt but he who hath

10 H. 7. 5. an Eſtate in Fee-ſimple, or in Fee-tail. But a Parſon or Prebendary ſhall have a Writ of Waſt upon their Leaſe, yet ſome ſay that they have not the Fee-ſimple in themſelves alone.

45 E. 3. 9. Thorp. ac. And if Tenant for term of life commit Waſt, and afterwards alieneth in Fee, yet the Writ of Waſt lieth againſt him: Otherwiſe it is if the Waſt be done after the Alienation made, as is ſaid; *tamen quære.*

3 H. 7. 11. & 5 H. 7. 24. for the reaſon of the Caſe. If Abbot committeth Waſt in Lands which he hath in Ward, and dieth, the Succeſſor ſhall not be charged. But if he be depoſed, the Succeſſor ſhall be charged. *M.* 49 *E.* 3.

21 H. 6. 3. 22 H. 6. 2. A Writ of Waſt ſhall be maintainable againſt one upon a Leaſe made unto him until he be promoted unto a Benefice, and the Writ ſhall ſuppoſe *quòd tenet ad terminum vitæ.* And ſo of a Leaſe made to endure from ſuch a Feaſt unto ſuch a Feaſt, the Writ ſhall ſuppoſe *quòd tenet ad terminum annorum* in that caſe, & by the Court the ſpecial matter ſhall be ſhewed.

Deſtruction of Villains by Tillage, adjudged Waſt.

Waſt done by a Gardian unto the value of 20 *d.* was adjudged Waſt, and the Plantiff recovered. *H.* 34 *E.* 3.

The Termor is not bound for to repair the Houſes which are ruinous at the time of the Leaſe made unto him.

40 *Aſſ.* 22. Waſt 24. by *Kirton*, a houſe which was newly built and not covered was abated by the Gardain, and no Waſt. But if a Frame which was once covered be diſcovered in the life of the Leſſor, if the Leſſee do eraſe it after his death; the Heir ſhall have Waſt. 41 E. 3. 3. 20.

If two Coparceners leaſe Lands for life, and Waſt is committed, and afterwards one of them dieth; the Aunt and the Neece ought to joyn in an Action of Waſt for the Waſt done before; and yet the Neece ſhall not recover any damages for the ſame, but the place waſted, and it ſeems they ſhall hold the ſame in Coparcenary. *M.* 11 *E.* 3.

If there be two Coparceners, and one hath iſſue, and dieth, and her Husband is Tenant by the Courteſie and committeth Waſt, his Son ſhall not have an Action of Waſt againſt him without naming the other Coparcener: but if he bring ſuch Writ, it ſhall abate. *Quod vi. P.* 2 *H.* 6. Title Waſt.

If there be Tenants in common *pro indiviſo*, and one committeth Waſt, the other two ought to joyn in an Action of Waſt againſt the third. See for that, *M.* 3 *E.* 2. Waſt.

If the Gardian commit Waſt, and the Heir being within age, bringeth an Action of Waſt, the Gardian thereby ſhall loſe the Wardſhip, and damages for ſo much as is waſted, beſides the value of the Wardſhip which is loſt; but if the Heir at full age do bring a Writ of Waſt againſt him who was Gardian, and recover, then he ſhall recover treble damages againſt the Gardian, becauſe the ſame is out of the Statute of *Glouceſter*, which ſaith, that the Gardian ſhall

loſe

loſe the Wardſhip; for he cannot loſe the Wardſhip there; and therefore he is not in that caſe as Tenants in Dower or by the Courteſie are, who were puniſhable in Waſt by the Common Law. *Quod vi. M.* 12 *H.* 4. 3. in the Title of Waſt, the opinion of *Thirning*.

Writ of Eſtrepment

U THere are two manner of Writs of Eſtrepment. One is when a man hath a real Action depending, as a *Formedon*, or a *Dum fuit infra ætatem*, or a Writ of Right, or ſuch Action wherein the Demandant ſhall not recover damages; then he may ſue this Writ of Eſtrepment againſt the Tenant, inhibiting him that he do not make Waſt, nor ſtrip, pendant the Action: and this is properly before Judgement is given for the Demandant. 3 H. 6. 16. Variance from the firſt Record, for the recital of the name, Town or the like, ſhall not abate the Writ, becauſe it is Original, not Judicial.

And another Writ of Eſtrepment lieth for the Demandant, where he hath Judgment to recover Seiſin of Land, and before Execution ſued by *Habere facias ſeiſinam*; he may ſue this Writ, that the Tenant do not waſt or ſtrip: and this X Writ doth recite the Recovery and the Judgment, &c. And alſo the Demandant may have a Writ of Eſtrepment directed to the Sheriff, commanding him that he do not ſuffer the Tenant to do Waſt or ſtrip. 3 H. 6. 16. No age in this Writ, for it is in nature of Treſpaſs, and no Proceſs of Utlary, for that it is a Preeyre. 14 H. 7. 10. If the Def. plead in arreſt of Judgment, or Releaſe be pleaded after Verdict, or if the Juſtices take advice of their Judgment, the party may have Eſtrepment, by *Read*, 2 H. 6. 13. 4 Eliz. Dy. 210.

Y And ſome ſay that this Writ of Eſtrepment doth not lie in ſuch Action where the Demandant ſhall recover damages againſt the Tenant. But it ſeemeth reaſonable that the Demandant have ſuch Writ where he doth recover damages, as where not: for it may be that the Tenant is not of ability to ſatisfie the Demandant for his Damages. And alſo if the Tenant ſhall be ſuffered to let the Houſes to fall to decay, or to pull them down, and to deſtroy the Parks and Chaſes, it ſhould be very inconvenient. 14 H. 7. 7. [61.]

A And in every real Action the Demandant may have a Writ unto the Sheriff, commanding him, that he ſee that the Statute which ordaineth the Eſtrepment be obſerved; and that he do not ſuffer the Tenant to do ſuch ſtrip: and by the like reaſon he may have the Writ againſt the Tenant, where he may receive damages, &c. 28 H. 6. 9. 9 E. 22 E. 3. 2. Eſtrepment 9. Eſtrepment brought againſt the Def. and a ſtranger to the Recovery.

B And if the Tenant do make a Feoffment hanging the Plea, the Demandant may have a Writ of Eſtrepment againſt the Tenant and againſt his Feoffee, &c. And by the ſame

ſame reaſon it ſeemeth that he may have a Writ of Eſtrepment againſt the Tenant and thoſe who are his Servants, naming their names, &c. although they have nothing in the Tenancy. *Quære tamen. Vid. T. 5 E. 2. tit. Eſtrepment.*

In an Aſſiſe, and in every real Action, where the Demandant ſhall recover damages, he may have a Writ of Eſtrepment for Strip made after the Judgment, and before Execution: but for Corn cut and carried away after Judgment, and before Extcution ſued forth by the Demandant, the Demandant ſhall not have a Writ of Eſtrepment. *Quære* what remedy he ſhall have: it ſeemeth none; for the Tenant may take the Profits of the Lands before Execution, as I think: for it ſhall not be ſaid Eſtrepment, if not that the Tenant do ſuch a thing which ſhall be ſaid Waſt if a Termor had done it.

34 E. 3. Eſtrepment 15. 15 Eliz. Dyer 325.

And when a man purchaſeth his original Writ directed to the Sheriff, then may he purchaſe his Writ of Eſtrepment againſt the Tenant, if he will; or a Writ unto the Sheriff, commanding him to ſee that the Statute which ordaineth the Eſtrepment be obſerved.

18 H. 2. 3. *Nota*, A man cannot have this Writ between the award of the Writ and the return; for the Statute giveth it pendent the Writ, and it is not pendent till returned. See 12 R. 2. Eſtrepment 6. by *Charlton*, he ſhall not recover damages for Waſt before the Judgment againſt the Tenant of the Land.

And if a man ſueth a Writ of Right unto the Lord of a Court-Baron, there he may ſue a Writ out of the Chancery directed to the Sheriff, that he ſee that Waſt be not done, &c. or he may ſue a Writ ont of the Chancery directed to the party himſelf, commanding him that he ſhall not do Waſt, &c. and an Attachment thereupon. And when the Writ is depending in the Common Pleas, then the Demandant ſhall have the Writ of Eſtrepment out of the Common Pleas, or out of the Chancery, at his election.

3 H. 6. 13.

And the Writ may be directed unto the Sheriff and the party; or he may have ſeveral Writs, one to the Sheriff, and the other to the party.

3 H. 6. 16. 12 R. 2. Br. Eſtrepment 13. they were at iſſue, if it were before the delivery, or after.

And hanging the Action the Tenant may do Waſt, and ſhall not be puniſhed, becauſe it is before the Prohibition delivered unto him; but only for that Waſt done after the Prohibition delivered.

And if a ſtranger of his own wrong do Waſt after the Prohibition delivered unto the Tenant, and againſt the Tenants Will, then the Tenant ſhall not be puniſhed for that Waſt, &c.

In

I In a *Scire facias* to execute a Fine, if the Tenant do commit Waſte, the Demandant may ſue a Writ of Eſtrepment, &c. 33 H. 6. 6. 14 H. 7. 7. 2 H. 6. 13.

K In an Aſſiſe, the Tenant did waſte after Verdict, and before Judgment given, and afterwards the Plaintiff had Judgment, and afterwards ſued a Writ of Eſtrepment againſt the Tenant for the Waſt done by him after the Verdict, and before Judgment; and it was awarded, that the Writ was well brought. *H.* 21 *E.* 3.

L And a Writ of Eſtrepment againſt the Tenant for Waſt done after the Judgment, and before Execution, was maintainable at the Common Law before the Statute. 33 H. 6. 6. *cont.* by ſome.

M And if a *Formedon* be brought of a Mannor, and after the Eſtrepment is brought againſt the Tenant, and afterwards a Tenancy doth eſcheat unto the Mannor, and the Tenant doth commit Waſte in that Mannor, he ſhall be puniſhed for the ſame, and yet it is not demanded by the Writ, but Sureties were demanded by the Writ in the name of the Mannor, and the Land cometh in lieu of the Services, &c. 15 Eliz Dyer 325. ac. 4 E. 3. 32. Br. Eſtrepment 12.

N If a man do recover in a Writ of Waſte, he ſhall have a Writ of Eſtrepment againſt the Defendant for Waſte done after the Judgment, and before the Execution. 14 H. 7. 10. *Cutler* and *Kable.*

O In Attaint in the Common Pleas, the Plaintiff ſhall have the Writ of Eſtrepment againſt the Defendant out of the Common Pleas, if he will, or out of the Chancery. 21 E. 3. 3. Br. Eſtrepment 7.

P If a man ſue a *Juris Utrum* againſt ſeveral Tenants, as he may, or a *Scire facias* againſt ſeveral Tenants, there he may have an Eſtrepment againſt any of the Tenants, and not againſt them all. And ſo it ſeemeth if a *Formedon* be brought againſt two Tenants joyntly, the Demandant may have an Eſtrepment againſt one Tenant only. *Quare*, if Juſtices of Aſſiſe may award this Writ. 34 E. 3. Eſtrepment 14. 5 E. 2.

Eſtrepment 11. Joynt-tenancy at the original is a good Plea, otherwiſe to ſay, that he was Joynt-tenant at the time of the Judgment given.

Q And in a *Juris utrum* ſued in *London*, a man ſhall have a Writ of Eſtrepment directed to the Sheriff of *London*, as appeareth by the Regiſter.

Writ de Partitione facienda.

R THe Writ *de Partitione facienda* is ſuch.

Rex,&c.Si A fecerit,&c. ſum.B.&c. oſtenſ.quare quum eadem A. & B. infimul & pro indiviſo teneant tres acras terræ tum pertin.de hæreditate quæ fuit M. *matris prædicti.* A *et* B *cujus.*

cujus hæred. ipſa ſunt, in I. *eidem* B. *Partitioni noſtræ inde inter eos ſecundum Legem & conſuetudinem regni* Angl. *faciend. contradic'. & eam facere non permittit, minus juſte, ut dicit', Et habeas ibi Sum'. & hoc Breve,*

9 H. 5. 15. *Quære* if Parcenery of Lands in tail ſhall have a Writ of Partition.

And if the Husband hath one part of the Land by purchaſe, and the other parcel in the right of his Wife, and another Coparcener hath another part as one of the Heirs of the common Anceſtor; then the Husband and the Wife ſhall have a Writ of Partition againſt the three Coparceners, and the Writ ſhall be ſuch: B

[34]

Rex. Vic', &c. *Si* I. *&* M. *uxor ejus feter'*, &c. *ſum'* M. &c. *oſtenſ. quare cùm idem* I. *& in jure ipſius* M. *de purparte ipſorum de Manerio de* T. *quod fuit* A. *patris prædict.* M. *cujus una hæred. ipſa eſt, contingent. idemque* I. *virtute Feoffamenti ſibi per* F. *filium & alter. hæred. prad.* A. *de purparte ipſius* F. *de eodem Manerio contingent. falſi, ac præf.* M. *filio & tertia hær. ejuſdem* A. *inſimul & pro indiviſo tenent Manerium præd. cum pertin', eadem* M. *Partitione inde, &c.*

And there is a Rule in the Regiſter ſuch, that is to ſay, That *Anno* 12. at *York* was ſealed a Writ *de Partitione faciendo* betwixt ſtrangers; and there it was ſaid, that a man ſhould have the ſame in every caſe without *de hæreditate* in the Writ: and it's there ſaid, that that Writ was never ſeen before. A

And if a man will ſue a Writ of Partition for Lands in *London*, then he ſhall have a Writ unto the Major and Sheriffs of *London* in the nature of an *Audita querela*, and the Writ ſhall be ſuch: C

Rex Majori & Vic. Lond. *ſalut'. Ex parte* S. *de* H. *&* I. *uxor. ejus nobis eſt oſtenſ. quòd cùm ipſi* R. *et* S. *inſimul & pro indiviſo teneant unum meſuag. cum pertin. in* Lond'. *idem* R. *et* S. *Partitioni indè ſecundum Legem et conſuet. ejuſdem Civitat. faciend. contradic', et eam fieri non permitt', in ipſorum* S. *et* I. *dampnum non modicum & gravamen, & contra Conſuetud. in Civitate illa hactenus obtentam & approbatam: Vobis igitur præcip', quòd auditâ ipſorum* S. *&* I. *in hac parte querel', & vocatis coram vobis* R. *et* S. *auditiſque hinc indè partium rationibus, iiſdem* S. *et* I. *in præmiſſis ulteriùs fieri faciatis quod de jure & ſecundum Conſuetudinem Civitatis prædictæ fuerit faciend', & hactenus in caſu conſimili fieri conſuevit. Teſte*, &c.

And by that it appeareth, that by the Cuſtom of *London* one Joynt-tenant, or Tenant in common, ſhall have a Writ of Partition againſt his Companion.

And Partition may be made in the Chancery, where one of the Coparceners is in ward to the King.

And

D And Partition may be made of an Advowſon or of a Reverſion, that one ſhall have the Reverſion of ſuch Acres, and another ſhall have the Reverſion of others Acres; and ſuch Partition may be without Deed. 11 H. 4. 61. 28 H. 6. 2. 9 Aſſ. 23. 3 E. 4. 9. 45 E. 3. Partition 7.

And it appeareth in 3 *E.* 4. that Tenants in common may make Partition by Deed.

E And Partitions betwixt husbands and wives ſhall bind 9 H. 6. 5.
F the wives, if they be equal. And by Partition made of a Manner without ſpeaking of the Advowſon, the Advowſon doth remain in common. And Joynt-tenants do make Partition of a Mill without Deed, and adjudged good. *Trin.* 47 *E.* 3. 19 H. 6. 25. 2 H. 7. 5. ac. 47 E. 3. 24. 3 E. 4. 9. 19 H. 6. 25. that they cannot

G If one Coparcener doth leaſe her part unto another Coparcener for years, yet ſhe ſhall have a writ of Partition againſt her Siſter during the term of years. 21 E. 3. Partition 9.

H After Partition in the Chancery, ſhe which is within age, after ſhe cometh of full age, if ſhe have too little, ſhall have a writ *de Partitione facienda* againſt her Siſter; or a *Scire facias*, upon the Record of the Partition in the Chancery, againſt her Coparcener, which ſhall be returned into the Chancery, &c. to ſhew wherefore new Partition or Extent ſhall not be made, &c. 21 E. 3. 31. partition 10 *Thorp.* The remedy is only by *Scire facias.*

I And Partition betwixt Coparceners, that one ſhall have the occupation of the Land from *Eaſter* until *Auguſt*, ſolely and in ſeveralty to her ſelf, and then that the others ſhall occupy the Lands ſolely and ſeverally from *Auguſt* to *Eaſter*, yearly to them and their Heirs, is adjudged a good Partition in the time of King *E.* 1. 10 E. 1. Partition 21. *C. Lit.* 4. *Hal.* 14 Eliz. *Wolden & Bridgwaters* Caſe &c.

K And by the ſame reaſom it ſeemeth a good Partition, if two Coparceners have two Mannors by deſcent, and they make a Partition, that one ſhall occupy one Mannor one year, and the other the other Mannor for that year, and then that he who occupied one Mannor one year, ſhould occupy the other Mannor for the year following; and ſo they and their Heirs ſhall change every year, and occupy the Mannor which the other Coparcener did occupy the year before.

And alſo Coparceners may make partition for term of life, or for years.

M And alſo partition, that one ſhall have the Land which is entailed, and the other the Fee-ſimple Land, is a good partition; and the proceſs in this Writ is *Sum'*, *Attachment*, and *Diſtreſs* infinite. V. 57. *Lit.* &c. 20 H. 6. 14.

Writ

20 H. 6. 1. not good by his ordinary Seal.
2 H. 6. 3. The Archdeacon doth certifie, and it is said that he was Ordinary immediate, & yet it is doubted whether good or no, because the King cannot have benefit to seise Temporalties, for that he hath not Temporalties as a Bishop hath.

BEfore this Writ shall be granted, the Contumacy and Contempt made by the party unto holy Church ought to be certified into the Chancery by the Bishop, by Letters under his Seal. But this Certificate by Letters may be made into the Chancery by a Bishop elect, before he be consecrated: And also the same may be certified by Letters of the Chancellor or Vicar-General, when the Bishop is beyond the Seas, or out of his Dioces, *in remotis agend'*, &c. And although that the Bishop be in his Dioces, yet the Certificate of the Vicar-General by his Letters unto the Chancery, reciting that the Bishop is *in remotis agend'*, is good, and shall not be traversed. And in time of Vacation of the Bishoprick, the Certificate ought to be made by the Gardians of the Spiritualties for the time being, or by the Archbishop, &c. if he be Gardian of the Spiritualties.

And upon this Writ he shall have an *Aliás*, and a *Pluries*, and if they are not answered, an Attachment against the Sheriff, directed unto the Coroners, returnable in the Kings Bench.

And if the Excommunicate hath made satisfaction unto the Church for his Contumacy and Contempt, &c. then the Bishop or Vicar-General, or the Gardian of the Spiritualties, &c. as before is said, ought to certifie the King in the Chancery, that the party hath made satisfaction unto the Church for the Contempt, &c. and thereupon he shall have such Writ to the Sheriff, *viz.*

[63]

Rex Vic. Linc. *salut'. Cùm* S. & I. *quos ad denunciationes Decani et Capituli Ecclesiæ beati* Petri Ebor. *sede vacante, per* thus, *ad denunciationem. ven'. Patris* A. Winton *Episcopi, tanquam excommunicatos, & claves contemnentes, per corpora sua, secundùm Consuetud'* Ang. *per te justiciari præceperimus, donec sanctæ Ecclesiæ tam de contemptu quàm de injur. ei illata ab eis fuerit satisfact'; idémque ex ipsis Decan. & Capitulo,* or thus, *ab ipso Episcopo Absolution. beneficium in form. meruerunt obtiner', sicut iidem Decanus & Capitul'*, or thus, *sicut idem Episc. per Literas suas patentes nobis significavit', vel significarvit: Tibi præcipimus, quòd ipsos* S. & I. *à prisona quâ detinent', si eâ occasione, & non aliâ, detinent. in eadem, sine dilatione deliberari facias,* &c.

And if the Sheriff will not execute that Writ, he shall have an *Alias* and a *Pluries*, and Attachment against the Sheriff directed unto the Coroners, returnable into the Kings Bench.

And

C And if the party excommunicated, who is ſo is taken and in Priſon, offer ſufficient Caution or Surety to abide the Ordinances and Rules of the holy Church, and the Judges there and the Ordinary do refuſe for to take ſuch Caution or ſurety, then he may have another Writ unto the Biſhop to admit of his Caution, and the Writ is ſuch:

Writ de Cautione admittenda.

Rex venerabili, &c. Ex parte A. *Cùm ad denuntiationem veſtram tanquam excommunicatum & ſclaves Eccleſiæ contemjnen', per corpus ſuum, ſecundùm Conſuetudinem* Ang', *per Vic. noſtrum* Lincoln', &c. *juſticiari præceperimus, donec ſanct. Eccleſiæ, &c. eſſet ſatisfactum; Nobis eſt oſtenſum, quòd licèt idem* A. *vobis frequent. obtulerit idoneam Cautionem de pareud. mandatis Eccleſiæ in forma juris, ut per hoc Abſolutionis beneficium conſequi poſſet, vos nihilominus Cautionem hujuſmodi ab eo admittere hactenus recuſaſtis, de quo miramur: Et quia nolumus quòd idem* A. *diutiùs in priſona contrà juſtitiam detineatur; Vobis mandamus, quod, acceptâ à præfato* A. *Cautione prædictâ ipſum* A. *à priſona quâ occaſione præmiſſâ detinet. deliberari mandetis, aliòquin quod noſtrum eſt in hac parte exequemur,* &c.

D And if the Biſhop will not ſend unto the Sheriff to deliver the perſon ſo excommunicated, then he ſhall have ſuch a Writ out of the Chancery for to deliver him.

Rex Vic', &c. *Ex parte* A. *qui ad denuniciatiõ' venerabil',* &c. and rehearſe the Writ ſent before unto the Biſhop for deliverance of the Priſoner, &c. *Et quia nolumus quòd idem* A. *diutius in priſona contr. juſtitiam detineat'; Tibi præcipimus, quòd in propria perſon. tua accedas ad præfat. Epiſc', & ex parte noſtra moneas & efficacit' indices, ut, acceptâ ab eodem* A. *Cautione præd', ipſum* A. *à priſona prædictâ, mandet deliberari. Et ſi idem Epiſcopus vel Cuſtos in præſentia tua id facere noluerit, tunc ipſum* A. *à priſona prædictâ, ſi eâ occaſione, et non alia detineatur in eadem, deliberari fac'. Teſte,* &c.

E And upon this Writ he ſhall have an *Alias* and a *Pluries* unto the Sheriff; and if he do not ſerve the Writs, he ſhall have Attachment againſt the Sheriff, but ſo ſhall he not have againſt the Biſhop, &c.

F And if the Biſhop do certifie by his Letters into the Chancery, that he hath ſent unto his Official or Archdeacon to abſolve the party Excommunicate, then the party ſhall have a Writ unto the Sheriff rehearſing thoſe Letters, &c. *Vobis præcipimus, quòd præd'* A. *cùm vob. conſtare poterit ipſum ab Excommunicatione ſua præd' per præd. Offic. vel Archidiacon. abſolvi,*

abſolvi, à priſon. quâ detinet', ſi eâ occaſione, & non aliâ, detineat. in eadem. ſine dilatione deliberari fac', &c. Teſte, &c.

And upon that Writ he ſhall have an *Alias*, *Pluries*, and Attachment againſt the Sheriff, if he do not ſerve the Writ.

And yet it ſeems that the Official or Archdeacon to whom the Biſhop hath ſent his Letters to abſolve the party is not bound to certifie the Sheriff that he hath ſuch Letters; but the Sheriff ought to go or ſend unto them to know the truth thereof, and thereupon to deliver the party: and the Biſhop, or he who excommunicated him, and upon whoſe Certificate the party was taken, may command the Sheriff to deliver him, as it appeareth by the Writs in the Regiſter.

And if a man be excommunicated, and taken by a *Significavit*, and after offers Caution unto the Biſhop to obey the Church, and the Biſhop do refuſe, for which he ſueth a Writ to the Sheriff, to go unto the Biſhop, and to warn him to take Caution, &c. now if the Biſhop think in his conſcience, or ſtandeth in doubt whether the Sheriff will deliver him by that Writ, the Biſhop may purchaſe another Writ directed to the Sheriff reciting the caſe, and in the end thereof, *Tibi præcipimus, quod ipſum A. à priſona prædict', niſi in præſentia tua cautionem pignorat. ad minus eidem Epiſc. de ſatisfaciend. obtulerit, nullatenus deliberes abſque mandato noſtro, ſeu ipſius Epiſcopi, in hac parte ſpeciali. Teſte, &c.*

[64]

And if the Biſhop do take Caution of the party to obey holy Church, then the Biſhop may certifie the ſame into the Chancery, and thereupon the party ſhall have a Writ unto the Sheriff for to deliver him.

And if the Sheriff do deliver ſuch perſons Excommunicate without order of Law, then upon complaint of the Biſhop into the Chancery, he ſhall have a new Writ unto the new Sheriff, rehearſing the matter, commanding him to take the ſaid perſon, and to detain him in priſon; and alſo in the ſame Writ he ſhall command the Sheriff, to make the old Sheriff to anſwer the King in his Bench for the contempt: And if the Sheriff who ſetteth the party at large be yet Sheriff, then it ſeemeth the Writ ſhall be awarded unto the Coroners to apprehend the party excommunicated, and to cauſe the Sheriff to appear, &c. as before is ſaid.

And if a man be excommunicated before the Chancellor of *Oxford*, &c. and the Chancellor doth certifie this Excommunication into the Chancery, &c. upon the ſame Certificate the King ſhall award a *Significavit* unto the Sheriff, to apprehend the party; and the Writ ſhall be ſuch: *Quum nos*

ſit

de gratia noſtra ſpeciali conceſſerimus, quòd Cancellar. Univerſitat. Oxon', *qui pro tempore fuerit, per Literas ſuas patentes Cancel. noſtro* Angl. *pro tempore exiſtent. ſignificare poſſit & certificar. de nominibus ſingulorum de juriſdictione præf. Cancellar.* Oxon', *qui majorem Excommunicationis vinculo fuerint innodati, & quòd dict. Cancell. noſtro, qui pro tempore fuerit, Brevia noſtra fieri & ſub magno Sigillo noſtro conſignari fac. pro captione eorum qui ſic per dictum Cancell.* Oxon. *fuer. excommunicati, & per quadraginta dies perſeveraver. in eod' ad ſignif. ſive certif. ipſius Cancell.* Oxon. *ſupradict', prout in Liter. noſtr. patent. inde confectis plenius inde continet'; ac* Joh. E. *Cancell. Univerſitatis prædict', &c. per Literas ſuas, &c. quòd* W. *de* B, *&c. ſua juriſdictionis propter ſuam, &c.* as in the Writ. And *quære* if the Univerſity of *Cambridge* have ſuch priviledge; it ſeemeth they have.

D If a man be ſued in the Spiritual Court, and he purchaſe a Prohibition, and deliver the ſame, and notwithſtanding they proceed, for which cauſe the Defendant ſueth an Attachment upon the ſame Prohibition, and pendant the Attachment, the Defendant in the Spiritual Court is excommunicated, and the ſame certified into the Chancery, by reaſon whereof a *Significavit* is awarded unto the Sheriff againſt the Defendant for to take him; now the Defendant may come into the Chancery, and ſhew how that he had a Prohibition, and an Attachment thereupon againſt the party, and that pendant the Attachment he is Excommunicated, and the *Significavit* awarded to take him. Now upon that he ſhall have a *Superſedeas* directed unto the ſame Sheriff, reciting all the matter, commanding him not to take him; and if he do take him for the occaſion aforeſaid, that he deliver him *donec Placitum dicti Attachiament. fuerit diſcuſſ', &c.* And this Writ ſhall iſſue out of the Chancery, if the Attachment be not returned into the Kings Bench. But if the Attachment be returned into the Kings Bench, then he ſhall have this Writ of *Superſedeas* out of the Kings Bench, or out of the Chancery, at his pleaſure. And it ought to appear by the Certificate of the Biſhop, that he hath been Excommunicated by the ſpace of forty days, before the *Significavit* ſhall be awarded. 3 H. 4. 3.

E And if a man be ſued in the Spiritual Court, or the Biſhop ſue or cite him *Ex officio*, and Excommunicate him, and certifie the ſame into the Chancery, and upon the ſame a *Significavit* is awarded unto the Sheriff for to apprehend him, &c. and afterwards the Official by Letters certifie into the Chancery, that he hath appealed from that Sentence

unto

unto the Court of *Rome*, or unto the Court of *Canterbury*, &c. then upon that Certificate he ſhall have a Writ of *Superſedeas* directed unto the Sheriff, reciting that he hath appealed, commanding him not apprehend him *pendente Appellationis negotio ſupradict'*; or thus, to ſurceaſe, *donec de Conſilio noſtro aliud indè duxerimus ordinand', vel uſque talem diem*; or thus, to ſurceaſe, &c. and if he hath apprehended him *eâ occaſione, tunc iſum à priſona præd' quâ, &c. deliberari faciat*, &c.

And after the *Significavit* awarded againſt the party, if he bring the Popes Bulls into the Chancery, teſtifying that he hath appealed from that Sentence, &c. he ſhall thereupon have a *Superſedeas* unto the Sheriff; and in the *Superſedeas* it behoveth not to make mention of the Popes Bulls, but to ſay, *quòd ſicut per inſtrumenta publica*, &c. And he ought to prove his diligence in ſuing his Appeal by Witneſſes, or by Oath, and within the year of the time of his Appeal ſued. And the Rule in the Regiſter is, *Writs* of Superſedeas (*hanging Appeals*) *ought not to be*; if it do not appear upon Record in the Chancery that the *Significavit* is granted and paſſed, &c.

And this Writ of *Significavit* doth not lie but where a man is excommunicated by a ſpecial name, and in a ſpecial Suit againſt him by the Ordinary *Ex officio*, or by the party, for that is called *Sententia majora Excommunicationis*, and upon Certificate thereof in the Chancery doth the Writ lie. But where he is not eſpecially excommunicated, &c. although that the Biſhop certifie that he is excommunicated *in Sententia Excommunicationis*, upon that this Writ of *Significavit* doth not lie, for they ought to expreſs the cauſe, and ſue againſt him ſpecially in the Certificate.

Upon an Excommengment certified by the Pope's Bull a *Significavit* ſhall not be granted.

[65] If a Biſhop certifie an Excommengment into the Chancery made in time of his Predeceſſor, and the Contumacy, &c. he ſhall have a *Significavit* thereupon: But upon the Certificate of the Commiſſary, or Official, of an Excommengement in the Chancery, and of the Contumacy a *Significavit* ſhall not be granted; nor upon the Certificate of an Abbot, who hath ordinary Juriſdiction, of an Excommengement in Chancery, a *Significavit* ſhall not be granted.

12 E. 4. 15, 16.
14 H. 4. 14.
8 H. 6. 3.
20 H. 6. 1.
7 E. 4. 14.

If a Biſhop certifie in Chancery, that another Biſhop hath certified him that the party is Excommunicate in his Dioceſs, and ſo hath remained by the ſpace of forty days; the

the ſame Certificate is void, and a *ſignificavit* ſhall not be granted thereupon.

B If a man be Excommenge in the Spiritual Court, and the Biſhop certifie the ſame in the Chancery and hath a Writ of *Significavit* directed unto the Sheriff to apprehend the Party, and the Defendant do appeal unto the Court of *Rome*, and hath Bulls and Inſtruments exhibited into the Chancery to prove the ſame; then upon theſe Bulls, &c. ſhewed in Chancery he ſhall have a ſpecial *Scire facias*, rehearſing all the matter directed unto the Sheriff, to warn the party at whoſe Suit he was Excommunicated to appear in the Chancery at a certain day, to ſhew cauſe why he ought not to ſurceaſe to apprehend the party ſo Excommunicated depending the ſame Appeal; and alſo commanding the Sheriff to take ſufficient Sureties, who will anſwer Body for Body for him who is ſo Excommunicated, to purſue, &c. and to do unto the party as the Court ſhall award, and that then he do ſurceaſe to apprehend him. And if the Sheriff return the Writ of *Scire facias*, that he hath warned the party, and hath ſent that Writ unto the Baily of the Liberty, who had given him anſwer, that he had warned the party at whoſe Suit he was ſo Excommunicated, to appear in the Chancery at the day given by the Writ, &c. now if the party who was returned warned doth not come or appear, then he who was Excommunicated ſhall have another Writ unto the Sheriff for to deliver him, &c. if he hath apprehended him; and if he hath not taken him, that he do ſurceaſe for to apprehend him, &c.

C And if a man be Excommunicated by the Biſhop, and after the Vicar-General certifieth the ſame into the Chancery, becauſe the Biſhop is *in remotis*, for which a *Significavit* is granted, and he is taken by it; and then he who is apprehended by his friends, ſheweth in the Chancery, how that he hath appealed unto the Court of *Canterbury*, which he followeth with effect: upon this Surmiſe he ſhall have a Writ unto the Sheriff who hath the party Excommenge in his cuſtody, commanding him that he warn the Biſhop or the Vicar-General, and him who ſued the Proceſs againſt the party Excommenge, to appear at a certain day in the Chancery, to ſhew wherefore the party ſhould not (*pendente Appellatione*) be delivered; and alſo to cauſe the party Excommenge under ſafe cuſtody to come, and to do as the Court ſhall conſider in the ſaid Cauſe.

D If the Biſhop do Excommunicate a man, and certifieth the ſame into the Chancery, and thereupon a *Significavit* is

awarded, and the party taken thereby, and he ſueth Appeal in the Court of *Canterbury*, or of *Rome*, &c. and hath a *Scire facias* againſt the Biſhop as aforeſaid, and againſt the party, to anſwer in Chancery, and ſhew cauſe why he ſhould not be delivered; by which the Biſhop and the party are warned, and appear not, for which cauſe the party is delivered: now if he who is Excommunicated will ſue any Action in the Common Pleas, or in the King's Bench, or elſewhere, if he think the other party will plead the Excommunication againſt him in the Common Pleas or elſewhere, then he ſhall have a ſpecial Writ of *Significavit* unto the Juſtices of the Court where he ſueth, rehearſing all the matter as aforeſaid, &c. commanding them to proceed *ſecundum Legem & conſuetudinem Regni.*

If the Biſhop certifie into the Chancery an Excommunication made at the Snit of any one, and thereupon a *Significavit* is awarded, and the party apprehended; now he who is apprehended may by his friends ſhew in the Chancery, that he ſued an Appeal from that Sentence in the Court of *Canterbury* with effect, and by *Scire facias* againſt the Biſhop, and the party at whoſe Suit he was Excommunicated, returned at a certain day into the Chancery: and thereupon he ſhall have a Writ unto the Sheriff, rehearſing all the matter, commanding him thereby to warn the Biſhop and the party to be in the Chancery at the day of the Return of the Writ, to ſhew what they can ſay wherefore the party ſhall not be delivered; and alſo by the ſame Writ commanding the Sheriff that he take ſufficient Sureties of the party Excommunicated to appear in the Chancery at the ſame day, and to carry him back again unto priſon, if the Court at the ſame day ſhall ſo think fit; and in the mean time to let him go at large by his Sureties, &c. And then if at the day of the Return of the Writ the party excommunicated doth not appear, nor his Bail, then ſhall a new Writ be awarded unto the Sheriff to apprehend the party Excommunicated again, &c. *donec ſanctæ Eccleſiæ tam de contemptu quàm de injuriis ab eo fuerit ſatisfactum*, and alſo to arreſt the Bail, to appear before the King in his Bench at a certain day, &c. *ad ſatisfaciendum nobis quàm præf. Epiſcopo*, and him at whoſe Suit he was Excommunicated; and farther to do as the Court ſhall award. And if at the day given in Chancery by the VVrit of *Scire facias*, the Biſhop, and the party at whoſe Suit he was Excommunicated, do appear, and alſo he who was Excommunicated, and the matter cannot be determined that day: then Day ſhall be given over unto

unto both parties, at a certain day at another Term, &c. and then the party Excommunicate ſhall have a ſpecial *Superſedeas* unto the Sheriff, rehearſing the whole matter, commanding him that he do not apprehend him till that day &c. if he have not other commandment from the King, &c.

A There are other Writs in the Regiſter which are called Writs of *Significavit*, becauſe they ſhall not be granted before that the Biſhop hath made Certificate by his Letters under his Seal of the matter in the Chancery, upon the which the Writs ſhall be ſo granted. And the Writ is, where a man is a Clerk convict for Felony, and afterwards makes his Purgation; now the Biſhop ſhall certifie this Purgation into the Chancery by his Letters, &c. and thereupon the Clerk convict ſhall have a ſpecial Writ out of the Chancery directed unto the Sheriff, to reſtore him to his Goods and Chattels. [66]

Rex Vic. Lincoln'. ſalut'. Cùm C. de P. Perſona Eccleſiæ de R. nuper de raptu uxoris S. & de aſportat. bonorum ſuorum, coram dilecto & fideli noſtro W. & ſociis ſuis juſtic. noſtris, prout mos eſt, tid. Epiſcopo liberatus, ibidem innocentiam ſuam ſuper eodem crimine coram eodem Ordinario legitimè purgaverit ſicut idem Epiſc. per Literas ſuas patentes nobis ſignifi' ; Tibi præcipimus quòd tid. C. terras, bona & catalla ſua per te in manum noſtram occaſione præmiſſ. capta, niſi fugam fecerit add. occaſione ſine dilatione reſtituas de gratia noſtra ſpeciali. Teſte, &c.

And the like Writ for the Heir of the Clerk, after his death, to deliver the Lands unto him, &c. and in the end of the Writ are theſe words, *ſine dilatione de gratia noſtra ſpeciali*, by which it ſeemeth that theſe words, *de gratia noſtra ſpeciali*, are not neceſſary words, but words of form for the Kings Honour, and that the King of right ought to make ſuch reſtitution.

B And if a man do demand his Clergy before the Juſtices, and reads as a Clerk, and the Ordinary is demanded, and cometh not, for which the Juſtices command the Clerk to Goal again, &c. now at the Suit of the Ordinary, or of his Vicar-General, unto the King or his Chancellor, he ſhall have a Writ out of the Chancery directed to the Juſtices of Goal-delivery, reciting the matter, commanding them that they ſend unto the Goaler to deliver him unto the Ordinary. 4 E. Dy. 215. Stamf. 101.

C And if a man be taken out of a Church or out of Sanctuary againſt his will: now if the Biſhop certifie the matter by his Letters Patents under his Seal into the Chancery, &c. deſiring reſtitution; then the King ſhall ſend his Writ unto

the Justices of Goal-delivery, reciting the matter, commanding them to bring back the party to the place from whence he was taken.

If an Abbot or Prior certifieth by his Letters under his D Seal, that his Monk, Frier, Canon, is vagrant out of his Order, &c. in the Country; then upon that Certificate he shall have a Writ unto the Sheriff, to arrest and apprehend him, and to deliver him unto his Abbot or Prior, &c. or to their Attorney, to chastise him according to the Rule of his Order, &c.

Writ de Homine replegiando.

IN divers Cases a man shall not have this Writ although he E be taken and detained in prison: As if a man be apprehended for the death of a man, or be taken by the Kings command, or if a man be apprehended by the command of the Chief Justice, as it appeareth by the Register. But the Statute of *West.* 1. is, that he shall not be replevisable if he be taken by the command of the Justices, and doth not say of the chief Justice.

And also if a man be taken by the command of the Justices of the Forest, or if a man be out-lawed, or if a man abjure the Realm, or if a man be Approver, or if a man be taken for Felony with the manner; or those who break the Kings prison, or those who are common and known Thieves, or those who are appealed by Approver so long as the Approvers live, if they be not of good fame, or for burning of houses feloniously, or those who counterfeit the Kings money, or the Kings Seal, or those who are taken by Certificate of the Bishop by a Writ *de Excommunicato capiendo*, or those who are apprehended for Treason, or those who are convict by a Writ of *Redisseisin*, &c. all these persons are not bailable by this common Writ *de Homine replegiando*. But first they ought to make their Fines, or agree with the King, and thereupon to have a special Writ to the Justices, or those who do keep them in Prison, reciting how they have been fined, commanding them for to deliver them.

And if two or three men be taken and imprisoned, they F may sue a joynt Writ *de Homine replegiando*. And yet *H.* 8 & 4.21. but 8 H.4. 16. cont. See 7 H. D. & 9 H.4.2. *H.* 4.31. such a Writ sued by two was abated: but yet it seems the Law is, they may sue joyntly, and the Writ shall be such:

Rex Vic. Loncoln', &c. *Præcipimus tibi, quòd justè & sine dilat. replag. fac'*, B.C. & D. *quos tu ipse cepisti, & captos tenes, ut dicitur, vel quos* D. & E. *ceperunt. & capt. tenent, ut dicitur*;

dicitur; nisi capti fuerint per special. præcept. nostrum, vel capitalu Justic. nostri, vel pro morte homin', vel pro Foresta nostra, vel pro aliquo alio recto, quare secundum consuet. Angl. non sint replegiand'; ne amplius clamorem inde audiamus pro defectu justitiæ. Teste, &c.

And upon that he shall have an *Alias* and *Pluries*, and Attachment, if need be. But if he who apprehendeth the man do claim him as his Villain, and the same is returned by the Sheriff upon the *Alias* or the *Pluries*, then the Plaintiff shall have another Writ of *Pluries* to the Sheriff thus:

Rex Vic', &c. Quum tibi plur' præceperimus, quòd justè, &c. W. quem H. cepit, & capt. tenet, ut dicitur, nisi capt. esset, &c. non sit replegiabilis, vel nobis causam significares, quare, &c. ac tu nobis returnasti, quòd accessisti ad Manerium prædict' H. ad replegiand. ibidem præd. W. juxta tenorem mandati nostr. præd', sed præd' H. deliberation. corporis ipsius W. non fieri permisit, eò quòd asserit ipsum W. esse nativum & fugitivum [67.]
suum Manerii sui præd' clamando jus nativitatis & servitutis in persona ipsius W. infra dominium Manerij sui, &c. Nos nolentes quòd præd. W. si liber homo sit, per hujusmodi caption. & clameum lege communi destituat', tibi præcipimus, quòd si præd. W. invener. tibi sufficient. Caution', &c. essendi coram nobis à die S. Michin xv dies, &c. ad respond. præf. H. si, &c. tunc ipsum W. interim repl. fac' juxta tenor. mandatorum nostrorum, &c. Et nihilominus si præd. W. fecerit te secur. de clam. suo, &c. tunc pone per vad', &c. præd. H. quòd sit coram nobis ad diem prædictum præd. W. de captione & clameo præd. resp. Et habeas ibi nomina Pleg', & hoc Breve, &c.

And in the same manner it shall be done in a *Homine replegiando*, if the Defendant claim the Plaintiff as his Ward, then upon that returned at the *Pluries* by the Sheriff, the Plaintiff shall have a special Writ as aforesaid, reciting that he holdeth the same Land of the Defendant by Socage, and not by Knights-service; commanding the Sheriff for to deliver him, and to admit the Defendant by Pledges to appear at a certain day, as afore is said, to answer unto the Plaintiff, &c.

A And if a man be taken within the Cinque-Ports, then he shall have a Writ *de Homine replegiando* directed unto the Constable of *Dover*, and unto the Warden of the Cinque-Ports, or his Lieutenant, in the nature of an *Audita querela*, and the Writ shall be:

Rex dilecto, &c. Constabular. Castri sui Dover' &c. & Custod. Quinque portuum suorum, vel ejus locum tenenti salutem. Man-

damus vobis, quòd audità querelâ A. quem B. cepit, & infra libertat. Portuum prædict' captum tenet, ut dicitur, vocatisque coram vobis partibus prædict', auditisque hinc inde eorum rationibus, ipsum A. si secundum Legem & Consuetud' Portuum prædict' replegiabilis fuerit, replegiari faciatis, nisi captus sit per speciale præceptum nostrum, vel capitalis Justic' nostri, &c. nè amplius inde clamorem audiamus pro defectu justitiæ, &c.

And if a man be taken by the Officers of the Foreſt, then he ſhall have a Writ *de Homine replegiando* unto the Keeper of the Foreſt, in ſuch form, *viz.*

Rex dilecto & fideli ſuo W. de B. Cuſtodi Foreſtæ ſuæ citra Trent', vel ejus locum tenenti in Foreſta ſua S. Mandamus vobis, quòd ſi A. & B. capti & detenti in Foreſta de S. pro transgr' Venationis per ipſos facta, ut dicitur, unde indictat. ſunt, inven' vobis, viz. utrque eorum duodecim probos & legales homines de Balliva veſtra, qui eos manucaptant habere coram Justic. noſtro proxim' itinerantibus ad Placita Foreſtæ in Com. N. eum in partes illas venerint, ad ſtand' recto de transgr' prædict', tunc ipſos A. & B. ſi ſecundum Aſſ. Foreſtæ replegiabiles fuer', prædict. vic. interim tradas in ball', ſicut prædict' eſt: & habeas ibi nomina illorum vic. hominum, & hoc Breve. Teſte, &c.

And if the Warden will not bail him, he ſhall have an *Alias* and *Pluries* againſt the Warden, directed unto the Sheriff, to attach him to anſwer before the King in his Bench, and to ſhew wherefore he hath not replevied him, &c. And in the ſame Writ it ſhall be contained, That he call to him the Verderors, to deliver him who is ſo taken in the preſence of the Verderors by good Bail, and that the Sheriff do deliver the names of the Bail unto the ſame Verderors, to anſwer before the Juſtices in the next Eyre. And no man ſhall be taken nor impriſoned for Vert or Veniſon, if he be not found in the manner, or indicted; in which caſe he ſhall be ſet to Bail by the Warden *ex Officio*, or otherwiſe by Writ, as is aforeſaid, &c.

For hunting in the Kings Chaſes, or in the Chaſes of other men, he ought to be ſued at the Common Law; and for the ſame a man ſhall not be taken and impriſoned, until he be convicted at the Common Law in an Action there brought againſt him. But for hunting in Parks, &c. the party ſhall have an Action within the year and day upon the Statute of *Weſt.* 1. *cap.* 20. But after the year and day the King ſhall have the Suit.

And if a man hath any Park within the bounds of any Foreſt, which Park is not incloſed according unto the Aſſiſe of the Foreſt, &c. then it ſhall be ſeiſed into the King's hands;

hands, and then the party ſhall have a ſpecial Writ of *Replevin*, to replevy a Park out of the Kings hands: and the Writ is ſuch,

Rex dilect'. & fideli ſuo W. B. *Cuſtodi, &c. vel ejus locum tenenti in Foreſta de* S. *ſalut'. Mandamus vobis, quòd Parcum A. de* B. *& Locum eſt infra metas Foreſtæ noſtræ prad' & qui, pro eo quòd non includitur ſecundum Aſſiſam Foreſtæ, captus eſt, ut dicitur, in manum noſtram, ſi ſecundum Aſſiſam Foreſtæ replegiabilis exiſtat, eidem* A. *uſque ad adventum Juſtic. Placit. Foreſtæ in Com. prædict' replegiari fac'. Teſte, &c.*

F In a *Homine replegiando*, the Defendant claims the Plaintiff for his Villain, and the Plaintiff pleads that he is free, and ſaith that the Defendant hath taken his Goods, and prays that he may gage deliverance, &c. for which the Defendant doth gage deliverance. But the Plaintiff ſhall not find Sureties that he ſhall re-deliver the Goods, &c. if he be found Villain. *Quod vi. M.6.E.4.2.*

5 H.7.3. 13 H.7.17. but the better opinion is, that it is in the Judges diſcretion. But 6 E.4.2. & 12 E.4.4. that he ſhall not find ſurety.

G But in a *Homine replegiando*, if the Defendant claim the Plaintiff as his Villain, the Plaintiff ought to find Sureties to deliver his Body to the Defendant if he be found his Villain. *Quod vid. P.31.E.3.*

[68]

A In a *Homine repleg.* the Plaintiff was bound in a Recogniſance in a certain ſum of money unto the Defendants uſe, that he would ſue him *cum effectu*; and if the Writ be abated for any cauſe, yet he ought to ſue another Writ for that taking, &c. otherwiſe he ſhall forfeit that Recogniſance, as it appeareth. *H.8.H.4.*

B If a man ſue a *Homine repleg.* and the Defendant claim the Plaintiff for his Villain, if the Sheriff return the ſame upon the *Alias*, or upon the *Pluries*, in the Kings Bench or Common Pleas, where the Writ is returnable; then upon Sureties found in Court where the Writ is returned by the Plaintiff to yield his Body, &c. he ſhall have a ſpecial Writ unto the Sheriff for to deliver the Plaintiff out of Priſon, &c. But by the Regiſter he ſhall have a ſpecial Writ unto the Sheriff to take Sureties of the Plaintiff, and to ſue with effect, and to yield his Body, if, &c. But the uſage at this day is, that he find Sureties in Court, &c. and not to award a Writ unto the Sheriff to take Sureties. *Quod vi. M.8 H. 4.3.*

C And in a *Homine repleg.* if the Sheriff return that the Defendant hath eſſoyned the Plaintiffs Body, ſo that he cannot deliver him; then the Plaintiff ſhall have a *Capias in Withernam* to take the Defendants Body, and to keep the ſame *quouſque*, &c. whether he be a Peer of the Realm or other common perſon. And if the Sheriff return *Non eſt inventus* in

this *Capias in Withernam* of the body, then the Plaintiff ſhall heve a *Capias in Withernam* againſt the Defendants Goods, &c. *Quod vide M.* 11 *H.* 4. in title of *Withernam.*

Writ de Replegiare de Averiis.

IF a man take more live Cattel than one Beaſt, then the Writ is ſuch: D

Rex, &c. *Præcipimus tibi quòd juſtè & ſine dilatione replegiari fac.* B. *Averia ſua, quæ* D. *cepit & injuſtè detinet, ut dicitur, & poſtea eum indè juſtè deduci fac', ne amplius indè clamorem audiamus pro defectu juſtitiæ*, &c.

And if he take but one live Beaſt, then the Writ ſhall be:

Rex, &c. *Præcipimus quòd repl. fac.* B. *quendam equum ſuum, vel quoddam jumentum ſuum, vel bovem ſuum*, &c.

And if a man take a dead Chattel, then the Writ ſhall be:

Rex, &c. *Præcipimus*, &c. *quòd repl. fac.* B. *lona & catalla ſua.* And in the Count he ought to declare of divers things: But if he take but one thing which is a dead Chattel, then the Writ ſhall be:

Rex, &c. *Præcipimus tibi*, &c. *quòd repleg. fac.* B. *quoddam rete, vel quoddam examen apium ſuarum, vel quoddam fermolend. ſui* And if the Sheriff doth nothing upon this Writ, then he ſhall have an *Alias repleg. fac'*, &c. and in the ſame VVrit he may have this Clauſe; *Vel cauſam nobis ſignifices, quare mand. noſtrum al. tibi indè direct. exequi noluiſti, vel non potuiſti*, &c. And then this VVrit ſhall be returned into the King's Bench or Common Pleas. And if he do not ſerve this VVrit, then he ſhall have a *Pluries* returnable into the King's Bench or into the Common Pleas. And in the *Pluries* is always this clauſe; *vel cauſam nobis ſignifices*: but not in the *Alias repleg.* if not that the party will have it put in the VVrit. And the Plaintiff may ſue all theſe VVrits forth together, *viz.* the *Replevin*, the *Alias* and the *Pluries*, and deliver them unto the Sheriff all at one time, if he ſo ſee good. And if the Sheriff doth not return the *Pluries*, then the Plaintiff may have an Attachment againſt the Sheriff, directed unto the Coroners. E

And it appeareth by the Regiſter, that if the Sheriff return upon the *Replevin*, *Sicut Alias* or *Pluries*, that he hath ſent unto the Bailiff of the Franchiſe, &c. who hath given him no anſwer, or that he will not make deliverance, &c. then the Plaintiff ſhall have a *Non omittas* unto the Sheriff, that he enter into the Franchiſe and make Return; and if the Sheriff doth not do ſo, he ſhall have an *Alias non admittas* directed unto the Sheriff, and afterwards a *Pluries non omit'*, &c. F

But

But it ſeemeth that that Return *Quòd mandavi Ballivo libertatis &c. qui nullum mihi dedit reſponſum*, or the Return that the Bailie will not make deliverance of the Cattel, are not good Returns. For by the Statute of *Weſt.* 1 *cap.* 17. in the end of the Statute it appeareth, That the Sheriff upon ſuch a Return made unto him by his Bailie, ought preſently to enter into the Franchiſe, and to make deliverance of the Cattel taken: And ſo it appeareth the Sheriff may do by the Statute of *Marlebridge*, *cap.* 21. If a Plea of *Withernam* be in the County by Plaint before the Sheriff, and the Sheriff ſend unto the Bailie of the liberty to make deliverance, and the Bailie doth nothing, that then the Sheriff *ex officio* may enter into the liberty without any Writ directed unto him in that caſe.

G And if the Sheriff upon the *Pluries* return, *quòd prædict' B. Averia præd. A. cepit, & ea fugavit de Com. præd. in Com' F. per quod ea eidem A. repl. non potuit*, &c. or if the Sheriff return, That he ſent to the Bailie of the Liberty of *D.* who hath return of Writs, &c. who gave him anſwer, that the Cattel are eſſoined into divers Liberties, by reaſon whereof he cannot have view of them, nor deliver the Cattel; or if the Sheriff return, That he himſelf cannot have view of the Cattel to deliver them; or if he return, That after the taking, &c. that the Defendant hath eſſoined the Cattel out of his Bailiwick, that he cannot deliver them; or if he return, That the Defendant hath eſſoined them into unknown places, that he cannot have view of them, to deliver them; or if the Sheriff return, That he ſent unto the Bailie of the Liberty, who anſwered him, that the Defendant had impounded the Cattel within the Rectory of the Church of *C.* for which cauſe he cannot deliver them, &c. Upon theſe Returns made by the Sheriff the Plaintiff ſhall have a Writ of *Withernam*, to take as many of the Defendant's Cattel, directed unto the Sheriff; and the Writ ſhall be ſuch: [69.]

A *Rex Vic' &c. Cum plur. tibi præceperimus, quòd juſtè, &c. A. Averia ſua quæ B. &c. detinet, ut dicitur, vel cauſam nobis ſignific', quare mandatum noſtrum plur. indè tibi direct. exequi noluiſti, vel non potuiſti; ac tu nobis ſignificaveris, quòd poſtquam præd' B. Averia præd' A. cepit, in Com. tuum ea fugaverit, & de Com. præd' in Com. C. per quod ea eidem A. replegiar' non potuiſti: Nos, malitiæ ipſius B. obviare volentes in hac parte, Tibi præcipimus, quòd Averia præd. B. in Ballivâ tua ſine dilatione capias in Withern', & ea detineas, donec eidem A. Averia ſua præd', ſecundum conſuetud. regni noſtri, replegiare poſſit, juxta tenorem mandatorum noſtrorum præd' prius tibi, &c.*

And

And note that in the Writ of *Withernam*, the cauſe which B
the Sheriff returned upon the *Pluries*, &c. ought to be put and rehearſed in the Writ of *Withernam*, as before is ſaid. And if the Sheriff return upon the *Pluries*, that he hath ſent unto the Bailie of the liberty, and that he anſwers him that the Beaſts are eſloined &c. then he ſhall have a *Withernam* directed unto the Sheriff, and the Sheriff ſhall ſend his Bailie into the liberty to ſue the *Withernam*; and if the Bailie do not execution, nor give anſwer unto the Sheriff of the Precept directed unto him, then the Plaintiff ſhall have a *Withernam* directed unto the Sheriff, with *Non omittas propter aliquam Libertatem &c. quin eam ingrediaris*, &c. and to take the Cattel in *Withernam*, &c.

And it appeareth by the Regiſter, if a man ſue a Replevin in the County without Writ, and the Bailie return unto the Sheriff that he cannot have view of the Cattle to deliver them; then the Sheriff by enqueſt of Office ought for to enquire thereof: and if it be found by the Jury that the Cattle are eſloined, &c. then the Sheriff in the County-Court may award a *Withernam* to take the Defendants Cattle. And if the Sheriff will not award a *Withernam*, then the Plaintiff ſhall have a Writ out of the Chancery directed unto the Sheriff, rehearſing the whole matter, commanding him for to award a *Withernam*, &c. And he may have an *Alias*, and after a *Pluries*, and Attachment againſt the Sheriff, if he will not execute the King's command &c. C

And a man ſhall have a Replevin of divers Cattel that are D
taken; As if a man take divers Cows or Sheep, and afterwards they have Calves or Lambs, the Plaintiff ſhall have his Replevin of them all, as well as of the Cows and Sheep which were taken.

Vide 16 H. 7. 24. that a precept to the Bailie by word, is as good as by writing. And the Sheriff, upon a complaint made unto him of ta- E
king of the Cattle, may command his Baily by word for to replevy them; and the ſame is as well as if the Sheriff had made his Warrant to his Bailie to have replevied them; for it may be that the Sheriff nor his Bailiff cannot write, or that they may want ſuch things wherewith they may write a Warrant, &c.

And the Lord ſhall have a Replevin if his Villains Cattel F
are taken; and yet he had not property in them at the time of the taking, but now by his claim he hath, &c. But it ſeemeth he ſhall not have damages for the taking of the Cattel, but only for the detaining of them, if the ſame be found for him.

And if a man take Cattel for Damage feaſant, and the o- G
ther

ther tenders amends, and he refuſeth it, &c. now if he ſueth a Replevin for the Cattel, he ſhall recover damages only for the detaining of them, and not for the taking of them, for that the ſame was lawful.

H And if the Lord diſtrain his Tenants Cattel wrongfully, and afterwards the Cattel return back unto the Tenant; yet the Tenant ſhall have a Replevin againſt the Lord for thoſe Cattel, and ſhall recover damages for the wrongful diſtraining of them, becauſe he cannot have an Action of Treſpaſs againſt his Lord for that Diſtreſs.

I And if a man do diſtrain Cattel in one County, and drive the Cattel into another County, the party may ſue a Replevin in which of the Counties he will, but not in both the Counties.

K And if the Cattel of a Feme ſole be taken, and afterwards ſhe marry a Husband, the Husband alone may have a Replevin: *quod vide Trin.* 33 *E.* 3.

L And in a Replevin, if the Plaintiff do declare, that the Defendant yet hath and detaineth the Cattel, and the Defendant doth appear, and afterwards maketh default; the Plaintiff ſhall have Judgment to recover all in damages, as well the value of the Cattel, as damages for the taking of them, and his coſts. *M.* 8. *H.* 8. *Rot.* 108.

Writ de Pone de remover le Plee.

M NOte, that if a Replevin be ſued by Writ out of the Chancery, then if the Plaintiff or Defendant will remove that Plaint out of the County into the Common Pleas, or King's Bench, he ought to ſue a Writ out of the Chancery, which is called a *Pone*; and the Writ ſhall be ſuch:

Rex vic. Lincoln' *ſalutem. Pone, ad Petitionem petentis coram Juſtic. noſtris apud* Weſtm. *tali die Loquelam quæ eſt in Cent. tuo per Breve noſtrum, inter* A. *&* B. *de averiis ipſius* A. *captis & injuſtè detentis, ut dicitur; & ſum. per bonos Sum. prad.* B. *quòd tunc ſit ibi præf.* A. *indè reſpinſ': & habeas ibi Sum', & hoc Breve.*

And if the Writ of *Pone* ſhall be removed into the Kings Bench, then the Writ is ſuch:

Rex, &c. Pone, ad Petitionem petentis coram nobis, ubicunq; tunc fuerimus in Anglia, *Loquelam, &c. ut ſuprà.*

And this Writ is ſued for the Plaintiff without putting any cauſe in the Writ of the removement, &c.

A But if the Defendant will remove the Plea in the County upon [70.]

upon a Replevin ſued by VVrit, then he ought to put an evident cauſe in the VVrit after the Teſt of the VVrit: and the form of the VVrit is ſuch:

Rex Vic. &c. Pone coram Juſticiariis noſtris apud VVeſtm' Coli die Loquel. quæ eſt in Com. tuo per Breve noſtr. int' A. & B. de Averiis ipſius A. captis & injuſtè detentis, ut dicitur; & dic. præf. A. quòd ſit ibi, Loquelam ſuam verſus præd. B. inde proſequat' ſi voluerit: & habeas ibi hoc Breve, & aliud Brev. Teſte, &c. Et quia præd' B. capit Averia præd' in feodo ſuo pro Conſuetud' & Servic. ſibi debitis, ut dicit', Fiat executio iſtius Brevis ſi cauſa ſit vera, & præd' B. hoc petit, & alter non. And he may ſhew divers other cauſes: *Quia præd. B. & C. ceper' Averia præd. in feodo ipſius B. pro Conſuetud, &c. Fiat executio, &c. ut ſuprà.* Or thus: *Quia A. Clericus D. Vic. Com præd', qui frequenter in abſentia Vic. Com. illius tenet Placita ejuſdem Com', eſt Conſang. præd' A. propter quod idem Vic. favet ipſ. A. in Loquela præd', ut dicitur, Fiat executio, &c. ut ſuprà.*

And he may ſhew any cauſe which induceth any favour that the Sheriff doth, or is like to do unto the Plaintiff. Or thus: *Quia præd. B clamat. præd. A. eſſe nativum ſuum, & tàm. eaſione aſſerit Averia præd' eſſe ſua propria, propter quod Loquela illa in Com. deduci non debeat, ut dicitur, Fiat executio, &c. ut ſuprà.*

And if a Replevin be ſued by VVrit in any other Lords Court than in the King's Court, then the Plaint cannot be removed before the Juſtices by the Plaintiff, nor by the Defendant, without putting cauſe in the VVrit; and the VVrit is; *Pone, ad Petition. detentis, Loquelam quæ eſt in Com' tuo per Breve noſtrum inter C. & abbat de W. & L. de quadam equo ipſius R. capt. & injuſtè detento, ut dicitur, & ſum. per bonos Sum. præd' Abbat. et L. quòd tunc ſint ibi, præf. R. inde reſp': et habeas ibi hoc Breve, et aliud Breve. Teſte, &c. Quia præd. Abbas eſt Dom. Cur. in C. in qua Loquela illa pendet per retornum Brevis noſtri, per quod idem R. in Loquela prædicta in eadem Curia verſus præf. Abbatem et L. juſtitiam conſequi non poteſt, ut dicitur, Fiat executio, &c. ut ſuprà.*

And if the plea be removed at the ſuit of the Plaintiff, then when he hath ſhewed cauſe in the end of the VVrit, he ſhall ſay afterwards in the ſame VVrit, *Propt. quod idem Querens in Loquela ſua præd' verſus præfat' B. in eadem Curia juſtitiam conſequi non poteſt, ut dicitur.*

And if the Plea be removed at the ſuit of the Defendant, then after cauſe ſhewed in the VVrit, it ſhall be ſaid, *propter quod idem Ballivus favet ipſ. A. in Loquela ſua præd', ut dicitur, Fiat executio, &c. ut ſuprà.*

Writ

Writ de Recordare.

B WHen the Plaint is in the County, and the Replevin ſued there without Writ; then if the Plaintiff or Defendant will remove that Plaint, he ought to ſue a Writ of *Recordare* out of the Chancery directed unto the Sheriff; and the Writ ſhall be ſuch:

It appeareth by the Regiſter, 6 & 7 *Br. Cauſe de remover Pleas* 36. that by *Recordare* Pleas ſhall be removed *extra Dorham & Ceſtriam*: y es theſe are Courts of Record.

Rex Vic' Linc' *ſalut. Præcipim' tibi, quòd in pleno Com. tuo recordar' ſac' Loquel' quæ eſt in eodem Com. ſine Brevi noſtro inter A. & B. de Averiis ipſius A. captis & injuſtè detentis, ut dic. & Record. illud habeas coram juſticiariis noſtr. apud* Weſtm. *tali die, &c. ſub ſigillo tuo, & ſub ſigillis quatuor legal. Milit. ejuſdem Com. ex illis qui Recordar. illi interfuer', & partibus eundem diem præfig. quòd tunc ſint ibi, in Loquela illa prout juſtum fuerit proceſſurum: & habeas ibi nomina prædictor. quatuor Militum, & hoc Breve. Teſte, &c. Fiat executio iſtius Brevis, ſi præd' A. hoc petat, & aliter non.*

And thereby it appeareth, that the Plaintiff may remove the Plaint by *Recordare* without any cauſe put in the Writ; But the Defendant cannot remove the Plaint by a *Recordare*, without ſhewing cauſe in the Writ, as before is ſaid upon the *Pone*. And the Cauſes for the Defendant ought to be ſuch; *Quia præd' B. in placitando aſſerit ſe Averia præd' cepiſſe in ſeperal' ſolo ſuo, ut in dampn' ſuo ibid' in quo quidem ſolo præd' A. clam. habere Commun. Paſtur' ut dic'; quæ quidem Loquela, ea quòd tangit liber. Tenement. (ut prædict' eſt) in eodem Comitat', ſecund' Legem & conſuetud' regni noſtri ſine Brevi noſtro placitari non debet; Fiat executio iſtius Brevis ſi cauſa ſit vera, et præd. A. hoc petat.* 27 H. 6. 3. *Quare.*

And if a Replevy be ſued by Plaint in the Court of any other Lord than in the County-Court before the Sheriff, then the *Recordare* which is ſued by the Plaintiff or Defendant ſhall be directed unto the Sheriff, and the Writ ſhall be ſuch:

Rex Vic. Linc. *ſalut', Præcipim' tibi, quòd aſſumptis tecum quatuor diſcretis et legalibus Militibus de Com' tuo, in propria perſona tua accedas ad Curiam W. de C. et in illa plena Curia recordari facias Loquelam quæ eſt in eodem Curia ſine Brevi noſtr' inter, &c. et Record' illud habeas ſub ſigillo tuo. at ſigill. quatuor legal' hominum ejuſdem Cur' qui Recordar' illi interfuer'; et partibus, &c. ut ſuprà. Quia præd. A. eſt Ballivus præd. W. de C. Curiæ ſuæ præd', et tenet Placita ejuſdem Cur. et Judex in ſua cauſa eſſe non debet.*

Another

[*71] 9 H. 6. 52. If a Recordare iſſue to a Court of Record to remove a Plea, although by that the Record be removed, it is void, if it be not to remove Indictments. 9 H. 6. 30. Br. *Cauſe de remover Plea* 37. 2 H. 8. 5. But if Conuſans be demanded, all the Record in bank ſhall be in the Franchiſe. 9 H. 6. 52. *Oyer* and *Terminer* ſhall not be removed by *Recordare* by Babington. 1 R. 3. 4. ac. Vid. 5 E. 6. fo. 91. 14 H. 6. 27. *Aſſiſes cont.* upon a Fine removed; and 22 H. 6. 7.

Another *Recordare* thus; *Accedas ad Wapentag. noſtr. de* H; or thus, *ad Hundr. noſtr. de* L; or thus, *ad Tithingum noſtrum de* L; *& in pleno Wapentag. illo*; or thus, *in pleno Hundr' illo*; or thus *in pleno Tithingo illo*, &c. And he may ſhew other cauſes as the Caſe requireth. And if the *Recordare* be returnable in the Common Pleas, and at the day of the Return the Sheriff return it * *tardè*; now the party that ſued that *Recordare* ſhall have a *Sicut alias Recordare* out of the Common Pleas, directed unto the Sheriff &c.

And if the Plea be diſcontinued in the County, yet the Plaintiff or Defendant may remove the Plaint into the Common Pleas or King's Bench by *Recordare*, &c. and it ſhall be good, and he ſhall declare upon the ſame; and the Court ſhall hold Plea upon the ſame Plaint; for if the Plaint be continued in the County, and iſſue joyned upon it, yet no thing ſhall be removed but only the Plaint; and in the common Pleas the Plaintiff may declare anew, &c. A

And in a *Recordare* to remove a Record out of Ancient Demeſn, the Writ ſhall ſay, *Loquelam & proceſſum*, and not *Recordum*, *quod vid.* 39 *H.* 6. by all the Juſtices; yet the form of the Regiſter in the Record, as before is ſaid; is, *Et Recordum illud habeas.* B

If a Record be removed out of a Court of Record by a *Recordare facias*, it cometh in without Warranty, and the Court ſhall hold Plea thereof. But if a Record cometh in Court without a Warrant, the Party may ſue a Writ, directed unto the Juſtices, that they proceed upon that Record *quæ coram vobis reſidet.* If the *Recordare facias* bare date before the Plaint were entred in the County, yet the Record is well removed, becauſe that both Courts are Courts of Record. But if the Record be removed out of the Court of any other Lord by ſuch Writ which beareth date before the entry of the Plaint, it is not good. C D

Reception.

A Writ of Reception lyeth where a man diſtraineth for Rent, or Service, or other things, and afterwards, pendant the Plea, he who diſtrained doth diſtrain again for the ſame Rent or Service, or other thing, the Beaſts of the party whom he had before diſtrained upon: then he who is ſo diſtrained ſhall have this Writ, and ſhall recover damages for the ſecond Diſtreſs taken; and he who took the Diſtreſs ſhall be fined for the wrong, although the firſt Diſtreſs were lawfully taken, and although that the Rent or Services for which I

which he diſtraineth were arrear, &c. becauſe by the firſt Diſtreſs he ſhall have return of the things taken, until he hath the Rent or Services for which he diſtrained. But for damage feaſant in his Lands a man may diſtrain the Beaſts of any man which he finds upon the Land, during the damage, ſo often as he ſhall find them ſo doing, becauſe he diſtraineth them every time for a new Treſpaſs, and new wrong done in his Land. *Tamen quære.* 47 E. 3. 7. Finchden case.

F And if the Lord diſtrain for Rent or Services behind, and afterwards pendant the Plea, the Lord doth command his Servant to diſtrain for the ſame Rent or Service, by reaſon whereof the Servant or Baily do diſtrain again; the Tenant ſhall have a Writ of Recaption againſt the Lord for the ſame Diſtreſs.

And ſo it ſeemeth, if the Lord diſtrain his Tenant for Rent or Service, and afterwards the Servant or Baily do diſtrain the Tenant again for the ſame Rent or Service, and the Lord do agree unto that Diſtreſs, by joyning in Aid prayer of the Servant or Baily, the Tenant ſhall have a Writ of Recaption againſt the Lord. But if the Lord diſtrain for Rent or Service, and afterwards the Lords Baily doth diſtrain the ſame Tenant for the ſame Rent or Service, pending the Plea; the Tenant ſhall not have a Recaption againſt the Lord, nor againſt the Baily, although the Baily maketh conuſance in the right of the Lord, &c. For it may be that the Lord had not notice of that Diſtreſs, or that the Baily had not notice of the Diſtreſs which the Lord took before for the ſame Rent or Service.

G But it ſeemeth in that caſe the Tenant may have an Action of Treſpaſs againſt the Baily for the ſecond Diſtreſs of his Cattel for the ſame Rent or Service, for which the Lord had diſtrained before.

H But if the Lord do diſtrain for Rent or Services, and afterwards (pendant the Plea) the Lord do diſtrain the Cattel of a ſtranger for the ſame Rent, and not his Cattle who was firſt diſtrained; he who is ſo diſtrained ſhall not have a Writ of Recaption, nor he who was firſt diſtrained. For it behoveth him who ſhall have this Writ of Recaption, that he have his Cattel firſt diſtrained before for the ſame cauſe for which they were diſtrained the ſecond time.

I But if a man do diſtrain two mens Cattel for Rent or Service, and afterwards he doth diſtrain the Cattel of one of them again for the ſame Rent or Service; now he ſhall have a Recaption alone in his own name.

K And if the Lord diſtrain the Beaſts of a ſtranger for Rent or

or Service, and afterwards (pendant the Plea) the Lord doth diſtrain the Beaſts of the ſame ſtranger for the ſame Rent or Service; the ſtranger ſhall have a Recaption as well as the Tenant, if the Beaſts were taken at two ſeveral times.

And if the Writ of Replevin be abated, then the Writ of Recaption ſhall abate, as it was judged in the time of *K. E. I.* L

And if the Lord do diſtrain for Rent arrear at a certain day his Tenants Cattel, and he ſueth a Replevin, &c. and the Lord avow for the Rent, &c. and the Tenant plead *Hors de ſon Fee*; if the Lord (pendant that Plea) diſtrain for Rent behind at another day after, the Tenant ſhall have a Writ of Recaption, becauſe the Lords Title ſhall be tried by the firſt Plea. But otherwiſe it is, if the Tenant in the firſt Replevy plead *Rein arriere*, or levied by Diſtreſs, then (pendant that Plea) the Lord may diſtrain for the Rent behind at a day after, becauſe that the Seigniory is there confeſſed, and the Tenant ſhall not have a Recaption. M

[72.]

47 E. 3. 7. And the Tenant, or he who is diſtrained, ſhall have a Recaption before any Avowry made, and may averr he diſtrained for the ſame cauſe. A

47 E. 3. 7. 9 H. 6. 4. And in a Recaption the Defendant ſhall not avow, as he ſhall do in a Replevin, but ſhall juſtifie the taking, &c. as he ſhall do in an Action of Treſpaſs; for the Plaintiff ſhall recover damages only in the Recaption for the Contempt that the Defendant hath done againſt the Law, and not for the taking of the Cattel, nor for the detaining of them. And in a Recaption it is not material whether the firſt Diſtreſs be of right or not. B C

And if a Plaint be removed out of the County into the Common Pleas by *Pone* or *Recordare*, and afterwards the Plaint. be Non ſuit in the Common Pleas, before or after an Avowry made, the Lord after this Non ſuit may diſtrain again for the ſame cauſe, and the Tenant ſhall not have a Recaption, becauſe there is not any Plea depending; and yet the Plaintiff may ſue a Writ of Second Deliverance upon the ſame Record. D

And if the Lord diſtrain the Cattel of the Tenant and a ſtranger, which they have in Common, for Rent or Service, and afterwards (pendant the Plea) the Lord doth diſtrain the Tenants Cattel only for the ſame cauſe; the Tenant ſhall have a Recaption for thoſe Cattel. But if the Lord diſtrain the Cattel of the Tenant only for Rent, &c. and afterwards (pendant the Plea) the Lord doth diſtrain the Cattel of the Tenant and a ſtranger, which they hold in common, for the ſame cauſe; it ſeemeth that the Tenant ſhall not have Recaption for thoſe Cattel for the intereſt of the ſtranger. *Quære.* E

And

F And if the Lord diſtrain, and the Tenant ſue a Replevin, which is removed into the Common Pleas, and the Conuſance is demanded by the Baily of the Freehold, and is granted, and afterwards the Baily fail to do right unto the party; if he diſtrain again for the ſame cauſe, the Tenant ſhall have a Recaption, becauſe the Lord ought to remove the Plea into the Common Pleas again by Reſummons, &c.

G And a Recaption lieth where the Lord diſtraineth other Cattel of the Tenant than he firſt diſtrained, as well as if he had diſtrained the ſame Cattel again, if it be for one and the ſame cauſe, as I conceive. And yet in 19 *E.* 3. the Iſſue was taken upon the Property of the Cattel, as that they were other Cattel of the Plaintiff, &c.

And a Recaption lieth as well where the Lord diſtraineth the Tenant again for the ſame cauſe, where the Plea is depending in the County before the Sheriff, as where the Plea is depending before Juſtices of Record.

H And if the Plea be depending in the County before the Sheriff, then the form of the Writ of Recaption is:

Rex Vic', &c. Monſtravit nobis A. quòd quum tu Averia ſua, quæ B. cepit et injuſtè detinuit, eid. A. ſine Brevi noſtro replegiaſſet, & dediſſes diem uſq; ad prox. Com. tuum, et præd. B. attachiâſſes, ad reſpond. ſuper præf. A. idem B. poſt Attachiament illud Averia præd. A. iterum cepit eâ occaſione quâ priùs ea ceperat, et ea ſicut priùs detinet. Et quia hoc injuſtum eſt & manifeſtè contra pacem noſtram, Tibi præcipimus, quòd Averia præd. A. ſine dilatione deliberari fac', quouſque capitale Placitum inter eos terminet'. Et ſi invener. quod præd. B. Averia præd. A. iterum ceperit eâ occaſione quâ priùs ea ceperat, et ea ſicut priùs detinet, tunc corpus præf. B. habeas coram te & cuſtodibus Placitorum Coronæ Noſtræ ad proximum Com. tuum. Et ſi per Ballivos tuos, per quos Averia præd. A. replegiat. fuerint, & per alios probos & legal. homines de Com. tuo, convinci poter. de ſecund. captim. pro una & eâd. occaſione, tunc ipſum B. ita per miſericordiam caſtiges, quod caſtigat. illa in caſu conſimili timor. alios præbeat delinquendi.

And if the Plaint be in the County by Writ of Replevin pending before the Sheriff, then the Writ is ſuch:

Rex. Vic. Salut', Monſtravit nobis A. quòd cum. ipſe Breve noſtrum nuper tibi detuliſſet de Averiis ſuis ſibi repl', quæ B. cepit & injuſtè detinet, & Averia illa eid. A. repleg', & eidem dediſſes diem uſq; ad prox. Com. tunm, &c. as in the Writ before. And if the Plaint be removed out of the County by *Recordare*, then the form of the Writ of Recaption ſhall be ſuch:

Rex Vic' &c. Monstravit nobis A. quòd cùm B. Averia præd. A. cepisset et injustè detinuisset, et tu ad querimoniam ipsius A. juxta mos est, Averia illa eid. A. replegiâsses, et ei dedisses diem usq; ad prox' Com. tuum, et præd. B. attachiasses ad respond' super hoc pref' A. et postmod' tibi preceperimus, quod haberes Recor. Loquelæ præd' coram Justic' nostris apud Westm. tali die prox. præterito; idem B. pendente Placito coram præf. Justic' Averia præd. A. iterum cepit, &c. ut supra.

And if the Plaint be removed out of the County by a *Pone* into the Common Pleas, then the Writ of Recaption is such:

Rex Vic. &c. Monstravit nobis A. quòd cum ipse Breve nostr' super tibi detulisset de Averiis suis sibi repleg', quæ B. cepit et injustè detinuit, et Averia illa eid' A. repl', et ei dedisses diem usq; ad prox' Com. tuum, et præd' B. attach. ad respond. super hoc pref. A. et postmod. præceperimus Loquel. illam poni coram Justic' nostris apud Westm. tali die prox. præterit', idem B. pendente Placito præd' coram iisd' Justic', Averia præd' A. iterum cepit eâ occasione quâ priùs ea ceperat, et ea sicut prius deten. et in contempt. Precept. nostrorum justiciar' non permittit, Et quia hoc injustum est, at manifestè contra pacem nostr. Tibi præcip. quòd si præd. A. fecerit te secur. de clam. suo prosequend' &c. tunc pone per vad' &c. præd. B. quòd sit coram Justic' nostris præd', ad respond. nobis de contemptu præd', et præd. A. de transgr. præd. et habeas ibi nomina Pleg' et hoc Breve, et Averia illa eid. A. repleg. facias. Teste &c.

[73] If a man sue a Replevin by Writ, and the Sheriff send A unto the Baily of the Liberty to replevy the Cattel, because that the taking was within the Liberty, and afterwards the Plaint is removed by *Pone* into the Common Pleas, and afterwards the Lord, or the party who distrained before, distrain again for the same cause; then he who is so distrained shall have a Writ of Recaption, and the Writ shall be such:

Rex Vic. &c. Monstravit nobis S. quòd cùm ipse Breve nostrum nuper tibi detulisset, de quodam equo suo sibi repl', quem L. et A. ceperunt, et injustè detinuerunt, ac Ballivi Libertat. Abbat. de R. de C. quibus Return. Brevis nostri prædict' haber' fecisti, equum illum eidem S. replegiâssent, et præd. A. et L. attachiassent, ad respondend. super hoc præf. S. et postmod. præceperimus Loquel. illam poni coram Justic. nostris apud Westm. tali die, anno regni nostri tertio; præfati L. et A. pendente placito prædicto coram Ballivis prædicti Abbat. Curiæ suæ præd. coram quibus Loquela illa, juxta libertates eidem Abbati concessas, per eosd. Justic. returnata est placitand. Averia præd' S. iterum ceperunt, &c. ut supra.

And

E And if a Lord hath a Hundred or a Wapentake, and hath power to hold Plea *de vetito Namio*, &c. and a man diſtraineth another there, for which he ſueth a Replevin within the Hundred, and pendant the Plea there, the party who diſtrained before diſtrained the ſame man again for the ſame cauſe; then he who is ſo diſtrained ſhall have a Writ of Reception in ſuch form directed unto the Sheriff.

Rex Vic', &c. Monſtravit nobis A. *quòd cùm* B. *Averia præd.* A. *cepiſſet, & injuſtè detinuiſſet, ac Ballivi* M. *de* N. *ad querimoniam ipſius* A. (*prout moris eſt*) *Averia illa eidem* A. *replegiaſſent, ac ei dediſſent diem uſque ad proximum Wapentag. prædict' Domini ſui de* N. *& præd.* B. *attachiaſſent ad reſpondend. ſuper hoc præf.* A. *poſtmodùmque tibi præceperimus, quòd aſſumptis tecum &c. accederes ad præd' Wapentag', & in pleno Wapentagio, &c ſine Brevi noſtro, inter ipſum* A. *& præf.* B. *de prædict. Averiis ipſius* A. *captis, &c. & Record. illud, &c. idem* B. *pendente Placito, &c. eâ occaſione quâ prius, &c. coni, &c.* as before in the

C Writ of Reception.

And now it appeareth by theſe Writs of Reception, that if a man be diſtrained, and he ſue a Replevin by Plaint before the Sheriff in the County, and afterwards hanging that Plaint, he is diſtrained again for the ſame cauſe, that he ſhall have a Writ of Reception, which ſhall be directed to the Sheriff and the Sheriff ſhall hold Plea upon that Writ of Reception.

But if a man be diſtrained within any Liberty, and he ſue a Replevin there by Plaint, or by Writ, and pendant that Plaint in the Liberty he be diſtrained again for the ſame cauſe, by the perſon who diſtrained before, he ſhall not have upon that Diſtreſs a Writ of Reception, becauſe the Plaint is not pendant before the Sheriff, nor before the Juſtices, and the King will not direct the Writ of Reception but unto the Sheriff. But if the Plaint were removed by *Pone or Recordare* out of the Liberty before the Juſtices, then the party who was diſtrained ſhall have Reception, as well for the Diſtreſs which was before the Writ of *Pone* or *Recordare*, as if the re-taking had been after the *Pone* or *Retordare* ſued forth.

D And if a man be Convicted before the Sheriff in a Writ of Reception, &c. he ſhall be amerced, and render damages unto the party for the contempt. But if he be convicted before the Juſtices in a Writ of Reception, he ſhall be fined, and not amerced, and alſo ſhall render damages unto the party for the contempt. 39 E. 3. 36.

Writ de Withernam.

THis Writ lieth where a man taketh the Cattel or Goods of another man, and the party ſueth a Replevin by Writ, and an *Alias* and *Pluries*, and upon the *Pluries* the Sheriff doth return, that the Cattle or Goods, &c. are eſloined, &c. by reaſon whereof he could not replevy them, &c. then this Writ of Withernam ſhall iſſue out of that Court where the *Pluries* is returned, returnable in the Kings Bench or Common Pleas: and the form of the Writ is ſuch:

Rex Vic. Linc. *ſal'. Quum pluries tibi præceperimus quòd juſtè* &c. A. *Averia ſua quæ* B, &c. *vel cauſam*, &c. *quare mandatum noſtrum pluries tibi indè directum exequi noluiſti, vel non potuiſti; ac tu nobis ſignificaveris, quòd poſtquam præd'* B. *Averia præd'* A. *cepit, & in Com' tuo ea fugavit de Com. præd. in* Com. B. *per quod ea eidem* A. *replegiari' non potuiſti: Nos, malitia ipſius* B. *obviare volentes in hac parte, tibi præcipimus, quòd Averia præd.* B. *in Balliva tua cap. in* Withernam. *at ea detineas, neque eid'* A. *Averia ſua præd' ſecundum Legem & conſuetudinem Regni noſtri repl. poſſis, juxta tenorem mandator. noſtrum præd. prius tibi*, &c.

And in the Writ of Withernam he ought to rehearſe the cauſe which the Sheriff returneth for which he cannot replevy them: as to ſay,

Ac poſtquam præd. B. *Catalla vel Averia illa cepit, Catall' vel Averia illa, aut Bov. vel Equum illum elongavit extra Ballivam tuam, ità quòd nullam deliberationem indè eid.* A. *facere potuiſti, ſicut nobis ſignificaſti; Nos*, &c. *tibi præcipimus, quòd Catall. vel Averia*, &c. as the Caſe is, *in Balliva tua ad valentiam Catall'*, &c. *præd'* A. *ſine dilatione cap. in* Withernam, *& ea detineas, donec eidem* A. &c.

[47] And there are very many cauſes that the Sheriff may return upon the *Pluries*, wherefore he cannot replevie them, whereof divers of them do appear in the Regiſter, which a man may there ſee.

And if the Sheriff do return upon the *Pluries repleg.* that he hath ſent unto the Bailie of the Liberty who hath return of Writs, &c. and that the Bailie hath given anſwer, that he cannot execute the Writ, becauſe he cannot have a view of the Cattel or Goods which were taken; then the Court in which ſuch Return is made ſhall award a Writ of Withernam directed unto the Sheriff, and the Sheriff ſhall thereupon make his Precept unto the Bailie of the Liberty; and if the Bailie of the Liberty doth not make a return thereof unto the

the Sheriff, then the Sheriff ſhall return the whole matter in Court, and thereupon the Court ſhall award a Writ of VVithernam, and a *Non omittas* with the ſame: and the form of the VVrit ſhall be ſuch:

Rex Vic. B. *ſalut. Cùm plur'* &c. [uſque ibi, *vel non potuiſti*] *ac* R. *de* C. *Ball' Libertatis* S. Walrici, *cui Retorn. Brevis noſtri habet' feciſti, tibi reſponderit, quòd Executionem Brevis illius facere non potuit, eò quòd viſum Averiorum præd' habere non potuit, ſicut tu nobis ſignificaſti; per quod tibi præceperimus, quòd Averia præd'* B. *in Ball. tua ſine dilat. caperes in* Withern' *& ea ditineres, donec eidem* A. *Averia ſua,* &c. *inde direct', vel cauſam nobis ſignif',* &c. *vel tu non potuiſti; ac tu nobis retornaveru, quod idem* R. *Ball. Libertatis præd', cui Retorn',* &c. *habet' feciſti, null' tibi inde dedit reſpons'. Tibi præcipimus, quòd non omittas propt. Libertatem præd', quin eam ingrediar',* &c. *ea. in* VVithern' *donec*, &c. *juxta*, &c. *prius tibi,* &c. *Teſte,* &c.

B And if a man diſtrain any mans Cattel, and he ſue a Replevin by plaint made unto the Sheriff, for which the Sheriff makes a Precept unto the Baily to replevy them, and the Bailie return at the next County, that he cannot replevy the Cattel, becauſe they are eſloined, or that he cannot have view of the Cattel; then the Sheriff in the ſame County-Court ought to make enquiry if it be true which is returned, and if it be found ſo by the Jury, then the Sheriff *ex Officio* ſhall make a Precept unto his Bailies in the nature of a Withernam, to take as many Cattel of the other party: and if the Sheriff make ſuch Precept to take the others Cattel in Withernam, and the Bailie will not execute the Writ, then the party may have a ſpecial Writ out of the Chancery, directed unto the Sheriff, commanding him to do Withernam, and to do execution of the firſt Judgment: and the Writ ſhall be ſuch:

Rex Vic' &c. *Monſtr. nobis* A. *quòd cùm* B. *&* C. *Averia præd' A. capi ſ. et injuſtè detinuiſ. ſidémque* A. *coram te proſecutus fuiſſet pro Averiis præd' ſibi ſecund. Legem & conſuetud. regni noſtri replegiand'. ac licet per* I. *Ball. tuum, quem ad Averia præd. de dict.* A. *repleg. miſiſti, teſtatum fuerit, & per inquiſitionem (prout moris eſt) in plen' Com' tuo fact. compertum, quòd idem Ball. viſum de eiſd. Averiis habere non potuit, ad eadem præf.* A. *replegiand', per quod in pleno Com. tuo conſideratum fuit, quòd Averia præd'* B. *et* C. *in Ballivâ tua caperentur in* Withernam, *& detinerentur, quouſq; eidem* A. *Averia ſua præd. ſecund' Legem & conſuetud. Regni noſtri replegiar' poſſint; idem tamen* A. *Execution', conſiderationis præd' nondum aſſecutus eſt, ad damn' ipſius* A. *non*

malicum et gravamen, et quia præf. A. ſubvenire volumus in hac parte, tibi præcipimus, quòd ſi ita ſit, Averia præd' B. et C. cap. in Withernam, *et ea detineat quouſque eidem A. Averia ſua præd' repl. poſſis ſecundum Legem et conſuetud. regni noſtri, et juxta conſiderationem præc',* &c.

And by that it appeareth, that the Sheriff may award Withernam, or Replevin ſued by plaint, if it be found by enqueſt in the County that the Cattel are eſloyned according to the Bailies return, &c. But upon the VVithernam awarded in the County, if the Baily do return that the other party hath not any thing, &c. he ſhall have an *Alias* and a *Pluries*, and ſo infinite, and hath no other remedy there. C

But upon a VVithernam returned in the Kings Bench or Common Pleas, if the Sheriff do return that the party hath not any thing, &c. there a *Capias* ſhall be awarded againſt him, and Exigent, and proceſs of Utlagary. D

In a Replevin ſued by VVrit, at the *Pluries* returnable the Sheriff doth return, *quod averia elongata ſunt*, &c. Now if the Defendant appear, the Plaintiff ſhall not have a VVithernam, becauſe the Defendant may gage deliverance. And if the Defendants Cattel be taken in VVithernam, they ſhall not be delivered to the Plaintiff, but the Sheriff ſhall keep them *quouſq;* &c. and the ſame appeareth by the words of the VVrit: but it is ſaid, that it is the uſage in the Kings Bench, that they ſhall be delivered unto the Plaintiff; by which it ſeemeth, that the form of the VVrit of VVithernam there is in another manner than it is in the Regiſter.

Note the laſt caſe 13 H. 7. the Defendant at the Exigent after the Withernam.

In a Replevin, at the *Pluries* returnable the Sheriff doth return, *quòd Averia elongata ſunt*, &c. and the Defendant doth appear, amd pleadeth that he did not diſtrain them: now the Plaintiff ſhall not have VVithernam. And ſo if the Defendant at the *Pluries* returned appear, and plead that the Cattel are dead in the default of the Plaintiff, the Plaintiff ſhall not have VVithernam. F

And the Defendant in ſome caſes ſhall have a VVithernam againſt the Plaintiff: as if the Defendant hath a Return awarded for him, and he ſueth a VVrit *de Retorno habendo*, and the Sheriff return upon the *Pluries, quòd Averia elongata ſunt*, &c. he ſhall have a *Scire facias* againſt the Pledges, &c. according unto the Statute of *Weſt.* 2. and if they have nothing, then he ſhall have VVithernam againſt the Plaintiff of the Plaintiffs Cattel. *Quod vide Tr.* 7. R. 2.

Moderata

Moderata Miſericordia.

THe Writ of *Moderata Miſericordia* lyeth in caſe where a man is amerced in a Court Baron, or other Court [75.]
A which is not a Court of Record, outragiouſly for Treſpaſs 14 H.4.4.
or other offence; then he may ſue this Writ directed unto the Lord of the Court or unto his Bailies, commanding them, that they moderately amerce the party according unto the quantity of the Treſpaſs, &c. And this Writ is founded upon the Statute of *Magna Charta. cap.*14. *Quòd nullus liber homo amercietur niſi ſecundum quantitatem delicti*, &c. And the Proceſs upon this Writ is *Alias* and *Pluries*, and Attachment, and the Attachment ſhall be awarded againſt him againſt whom the original Writ was ſued; and the form of the Writ is ſuch:

Rex Ball' ſuis de S. ſalutem. Monſtravit nobis C. quòd cum ipſe nuper amerciatus eſſet in Cur. præd' domini veſtr. de I. *pro modico delicto, in quod incidit, vos ab eo gravem exigitis redemptionem, contra tenorem Magnæ Chartæ de Libertatibus* Angliæ, *in*
B *qua continetur, Quòd nullus liber homo amercietur niſi ſecund' quantitatem delicti, & hoc ſalvo Contenemento ſuo, & Villanis ſalvo Wainagio: Et ideo vobis præcipimus, quòd à præf. C. moderatam capiatis Miſericordiam, ſecundum quantitat. delicti illius, nè clamor ad nos veniat indè iteratus. Teſte*, &c.

And the Attachment ſhall be always directed unto the Sheriff, and the Writ ſhall be ſuch:

Rex Vic' &c. Si A. fecerit, &c. tunc ſum. Bat C. Ball. D. de I. *quòd ſint coram Juſtic. noſtris apud Weſtm' &c. oſtenſ. quare, cùm idem A. ſuper amerciandus eſſet in Hundred' vel Cur. dicti dom. ſui de* I. *pro modico delicto, in quod incidit; et nos ad requiſitionem ipſius A. præf. Ball. præceperimus, quòd juxta tenor' Magn' Chartæ de Libertatibus Ang. moderatam ab eo caperent Miſericord', ſecund. quantitatem et modum delicti illius; iidem Ballivi, ſpretis mandatis noſtr. præd', præf. A. gravioremin indè redemption. per varias diſtrictiones turquere non ceſſârunt, in noſtri contempt', & ipſius A. grave dampnum, et contra tenorem Chartæ præd' ut dicitur. Et habeas ibi Sum', &c. Teſte*, &c.

And if a man be amerced in a Court-Baron, where he did not any Treſpaſs, but it is ſo preſented by the Enqueſt, &c. yet it ſeemeth he ſhall not have this VVrit, if the Amercement be not outragious: but if the Steward of his own head
C will amerce any Tenant or other party without cauſe, I conceive the party ſhall have an Action of Treſpaſs, if he be diſtrained for that Amercement, and the party ought not for to ſue his VVrit of *Moderata Miſericordia*.

If a Feme covert be amerced for Treſpaſs., &c. if the Husband be diſtrained for the ſame, he ſhall have this Writ, if the Amercement be outragious. D

But what ſhall be ſaid a moderate Amercement, and what not, appeareth by the words of the ſaid Statute, which ſaith *Secundum quantitatem delicti*. By which it ſeemeth that if it exceed the value of the Treſpaſs, it is not a moderate Amercement; and that ſhall be intended for the value of the Treſpaſs which is done unto the Lord, and to him who ſhall have the Amercement: for if one Tenant do Treſpaſs unto another Tenant, he ſhall be therefore amerced in the Lords Court by preſentment of the Treſpaſs; but that Amercement ſhall not be unto the value of the damages which is done unto the Tenant, but having regard unto the wrong and offence done unto the Lord for the wrongs done unto his Tenant. E

And if a man be Non-ſuit in a Court-Baron, he ſhall be amerced, and if it be outragious, he ſhall have this Writ of *Moderata miſericordia*: and ſo ſhall the Defendant if he be amerced in any Suit brought againſt him, becauſe it is found againſt him; or that he makes default to wage his Law at the day given him in any Plaint ſued againſt him, &c. And if the Amercement be not moderate, he ſhall have this Writ of *Moderata miſericordia*, &c. F

In a Court-Baron, if two be amerced for one Treſpaſs outragiouſly, they ſhall not joyn in a *Moderata miſericordia*, for they ſhall be ſeverally amerced, although the Treſpaſs be joyntly done. And ſo is it in a Plaint ſued by two, if they be Non-ſuit, the Amercements ſhall be ſeveral, and they ſhall not joyn in *Moderata miſericordia*; yet if an Amercement be ſet joyntly upon them, then they ſhall joyn in the Writ. But it ſeemeth this Amercement ought to be affeered by perſons certain, when they are amerced for any Treſpaſs. And if the Amercement which is ſet be affeered by his Peers, then this Writ of *Moderata miſericordia* doth not lie; for then it is according unto the Statute of *Mag. Chart'*, *quod vide* 10 *E.* 2. in Title of Actions upon the Statute in the Abridgment. G

And it is called *Miſericordia*, in Engliſh Mercy, for the ſmalneſs thereof, by which it ſeemeth it ought to be leſs than the offence: and then it ſeemeth they ſhall be ſeverally amerced for a joynt offence, becauſe one ſhall not be charged for the offence of another; but they ſhall equally bear the charge, and pay the ſum aſſeſſed. H

And in the common Pleas, the courſe is, when there are divers Defendants, to make ſeveral Eſtreats of the Amercements, I

ments, and to deliver them unto the Clerk of the Aſſiſe, and he ſhall deliver them unto the Coroners, and they uſe to *aſſere* the Amerciments ſeverally.

K And if divers Demandants be amerced in a real Action for their Non-ſuit, they make the Eſtreats ſeverally upon them, and deliver them as before unto the Clerk of the Aſſiſe, who delivereth them over unto the Coroners to *aſſere* the Amercements.

But in a perſonal Action in the Common Pleas, where there are many Plaintiffs named, and they amerced, the Clerk hath forgotten, and cannot ſhew how the uſage hath been to make the Eſtreats againſt them; but it ſeemeth with reaſon, that all ſhall be done in one manner. For it cannot properly be ſaid that a man hath Mercy ſhewed and offered unto him, if he ſhall pay, or ſhall be put to more charge for the offence of another perſon, which himſelf hath not done: For the nature of the word (Mercy) is, that a man ſhall not be puniſhed ſo much as he hath deſerved. By which it appeareth, that every Amercement ſhall be or ought to be ſeverally aſſeſſed upon every one for his own offence, and that to a leſſer ſum than he deſerveth to pay. *Quære* the uſage and manner thereof in the Common Pleas, and look the Statute of *Weſt.* 1. *ca.* 18. by the equity of which Statute the uſage is accrued, and doth continue in the Common Pleas and King's Bench, and before the Juſtices of Aſſiſe; and the Clerk of the Warrants in the Common Pleas doth make the Eſtreats, and doth deliver them unto the Clerks of the Aſſiſe, to deliver them unto the Coroners to *aſſere* the Amercements; and the Coroners do aſſeſs the Amercements, and deliver them unto the Clerks of the Aſſiſes, and they deliver them back unto the Clerk of the Warrants, who maketh the Eſtreats: and then one of the Juſtices of the Common Pleas or the Clerk of the Warrants, goeth with the Rolls of the Eſtreats into the Exchequer, and there puts them before the Barons of the Exchequer. And the form of the Eſtreat is ſuch: [76]

A Staff. *De* Henr. Hart & Will. Maner, *quia non habuerunt* Johannem Brok *nuper de* B. *in Com. præd. Yeom', quoniam manucæperunt*, &c. *De* Johanne N. *pro ſe et Pleg. ſuis, quia non eſt proſecutus Breve ſuum v. r. ſ a* N. H. *de* K. *in Com. præd. Husbandman in Placito Debiti* &c. *D:* Stephano White *pro falſo clam. ſuo verſus* D. *de*, &c. *in Placito Detentionis*, &c. And ſo the Eſtreat doth rehearſe the cauſe for which he was amerced, &c. For the Juſtices do not aſſeſs any ſum for any Amercement upon any perſon, but make their Entry as aboveſaid; and then the Coroners do ſet the ſum upon the heads of every of them;

them; as upon every one of them 4 s. or 6 s. as they ſhall think fit in their diſcretions, *viz.* ſeverally upon every of them.

And by the Statute of *Magna Charta*, *cap.* 14. no Spiritual B perſon ſhall be amerced according to his Spiritual Benefice; but according unto his Lay-fee, and according unto the quantity of the Treſpaſs; and if he be otherwiſe amerced, he ſhall have a Writ upon the ſaid Statute againſt the Sheriff, or him who amerced him. And the Writ ſhall be ſuch.

Rex Vic', &c. *Quum in Magn. Charta de libertat.* Angl. *conjinetur, Quòd nulla Eccleſiaſtica perſon. amerc. ſecundum quantitatem Benefic. ſui Eccleſiaſtici, ſed ſecundum Laicum Feod. ſuum; ac jam ex querela S. Perſon', &c. accepimus, quòd licèt ipſe nullum Laicum Feod. teneat, tu tamen ipſum S. in Turno tuo, in Hundredo tali, ſuper aliquibus coràm te in eodem Turn. præſentat', ipſo S. ſuper his non ſummonito, nec legitimè convicto, pro voluntate tua graviter amerciaſti, et Amerciamentum illud de bonis ſuis Eccleſiaſticis levare intendis minus juſtè, in ipſius S. dampnum non modicum, et contrà tenor. Chartæ prædict'*: *Nos volentes ipſum S. in hac parte prægravari, tibi præcipimus, quòd ſi ità eſt, tunc ipſum S. coram te taliter amerciar', ſeu Amerciament. aliquod de bonis ſuis Eccleſiaſticis levari non fac', contr. tenorem Chartæ ſupradict'; & Diſtrictionem, ſi quam,* &c. *Teſte*, &c.

And upon this he may ſue an *Al'* and *Pl'*, and *Attach.* un- C leſs the Sheriff do according to the Writ directed unto him.

And it ſeemeth that the party may ſue a Writ upon the D Statute by a *Pone*, &c. if he will, againſt the Sheriff or the other who amerced him, becauſe that the Statute is a Prohibition in it ſelf, and need not ſue ſuch Writ as aforeſaid. And by the Statute of *Magna Charta* every Amercement in a Court-Baron ought to be aſſered by two Tenants of the Mannor upon Oath. And if the Steward or Baily will aſſeſs any Amercement without Afferment, then he who is amerced ſhall have ſuch Writ:

Rex Ballivis Epiſc. W. de S. Salut'. Quum in Magna Charta de Libertatib. Angl' *continetur, Quòd nullus liber homo amercietur pro parvo delicto niſi ſecundum modum ipſius delicti, & pro magno delicto ſecund. magnitudinem delicti, ſalvo Contenemento ſuo, & Mercator eodem modo ſalvâ Merchandiſâ ſuâ, & Villanus alterius quàm noſtri eodem modo amerciet', ſalvo Wainagio ſuo, ſi incider' in manum noſtram, et nulla Miſericordiar. prad. ponat. niſi per ſacrament. proborum et legalium hominum de viſn', prout in eadem Charta plenius continetur; ac jam ex querela hominum & Tenentium Manerii prad. acceperimus,*

quòd

quàd vos ipſos homines et Tenentes clam in Cur ejuſdem Manerii in Miſericordiam inciderint pro aliquo debit'. ad magnas pecuniar. ſummas voluntariè aſſidetis, non permittentes quòd Miſericordia illa per ſacrament. hominum et Tenentium ejuſdem Manerii penatur, in ipſorum homin. et Tenentium dampnum non modicum, et contra tenorem Chartæ prædˈ: Nos, volentes Chartam ill. in omnibus et ſingulis ſuis articulis inviolabiliter obſervari, vobis præcipimus, quòd ab hujuſmodi ſummis ſuper homin. et Tenent' prædˈ. quum in Miſericordia inciderint voluntariè aſſidend. penitus deſiſtentes, Miſericordiam hujuſmodi per ſacramentum proborum et legalium hominum ejuſdem Cur. poni permittatis, juxta tenorem Chartæ prædˈ. Teſte, &c.

And he may ſue an *Alias* and a *Pluries* thereupon, *vel cauſam nobis ſignifices*, and afterwards an Attachment againſt the Bailies, or him who aſſeſſeth the Amercement. [77]

Writ de Nativo habendo.

A THe Writ *de Nativo habendo* lieth for the Lord who claimeth the inheritance in any Villain, when his Villain is run from him, and is remaining within any place out of the Mannor unto which he is regardant, or when he departeth from his Lord againſt the Lords will: and the Writ ſhall be directed unto the Sheriff; and if the Sheriff will not ſerve the Writ, he ſhall have an *Alias* and a *Pluries*, and Attachment againſt the Sheriff, if need be.

B But if a man have an Eſtate but for term of life or for years in a Villain, it ſeemeth he ſhall not have this Writ of *Nativo habendo*, becauſe this Writ is in the nature of a Writ of Right for to recover the inheritance in the Villain, and the ſame appeareth by the Count in the Writ. *Quære tamen.*

Vid. 1 & 2 Eliz. Dyer 173. Where this Writ lieth, and out of what Court. And Vid. 1 E. 4. 3. a good Caſe. 7 H. 446.

C And the Sheriff may ſeiſe the Villain, and deliver him unto his Lord, if the Villain confeſs unto the Sheriff that he is his Villain; but if the Villain ſay to the Sheriff, that he is Frank, then it ſeemeth that the Sheriff ought not to ſeiſe him: as it is in a *Replevin*, if the Def. claim property, the Sheriff cannot replevy the Cattel, but the party ought to to ſue a Writ *de proprietate probanda*; and ſo if the Villain ſay that he is a Free-man, &c. then the Sheriff ought not to ſeiſe him, but then the Lord ought to ſue a *Pone* to remove the Plea before the Juſtices in the Common Pleas, or before the Juſtices in Eyre. But if the Villain purchaſe a Writ *de Libertate probanda* before the Lord hath ſued the *Pone* to remove the Plea before the Juſtices, then that the Writ of *Libertate*

Libertate probanda is a *Superſedeas* unto the Lord, that he proceed not upon the Writ of *Nativo habendo* till the Eyre of the Juſtices, or till the day the Plea be adjourned before the Juſtices, and that the Lord ought not to ſeiſe the Villain in the mean time. But at this day the Writ of *Libertate probanda* is of little effect, becauſe by the Statute of 25 *E.* 3. *cap.* 8. the Lord may ſeiſe his Villain, and alledge Villainage in an Action brought againſt him by the Villain, although he hath a Writ *de libertate probanda* depending, which is adjourned before the Juſtices in *banco*, or the Juſtices in Eyre.

And if the Lord ſue a *Nativo habendo*, and the Villain purchaſe this Writ of *Libertate probanda*, by that the Sheriff ſhall not proceed farther in the Writ of *Nativo habendo*, but the whole Plea ſhall be adjourned before the Juſtices in Eyre; and then the Writ of *Nativo habendo* and the Record ſhall be ſent before the Juſtices in Eyre, and the Lord ſhall declare thereupon, and the Villain ſhall make his defence, and plead thereunto; and the Villain ſhall not declare upon the Writ *de Libertate probanda*, nor any thing ſhall be done thereupon; for that Writ is but a *Superſedeas* to ſurceaſe for the time, and to adjourn the Record and the Writ of *Nativo habendo* before the Juſtices in Eyre: and that appeareth by the forms of the Writs of *Nativo habendo*, and of *Libertate probanda*, which are ſuch:

Rex Vic' ſalut'. Præcipim. tibi, quòd juſtè et ſine dilatione fac' haber' A. de C.B. *Nativum & fugitivum ſuum, cum omnib' catallis ſuis, & tota ſequela ſua, ubicunque inventus fuerit in balliva tua, niſi ſit in Domin' noſtro, qui fugit de terra ſua poſt Coronat' Dom' H. Reg' filii Regis* Johan': *& prohibem ſuper forifacturam noſtr. nè quis eum injuſtè detineat. Teſte, &c.*

The form of the *Libertate probanda* is ſuch.

Libertate probanda.

REX Vic', &c. Monſtraverunt nobis A. *&* B. *ſoror ejus, quòd cùm ipſæ liberæ homines ſint, & parat' libertatem ſuam probare,* F. *clamans eas nativas ſuas, vexat eas injuſtè: Et ideo tibi præcipim', quòd ſi præd' A. & B. fecerint te ſecur' de libertate ſua probanda, tunc pones Loquelam illam coram Juſtic. noſtris ad primas Aſſiſas, cum in partes illas venerint, quia hujuſmodi probatio non pertinet ad te capiend'; & interim eiſd. A. et B. pacem indè habere fac', et dic' præf.* F. *quòd tunc ſit ibi, Loquelam ſuam verſus præfat' A. & B. indè proſecutur', ſi voluerit. Et habeas ibi hoc Breve. Teſte, &c.*

And

G And now by theſe two Writs it appeareth, that the Lord who ſueth the Writ *de Nativo habendo*, ſhall purſue his Plaint upon the Writ of *Nativo habendo*, and ſhall declare thereupon, &c. and that the Villain ſhall make defence, and upon that Writ *de Nativo habendo* the Freedom ſhall be tried. And alſo it ſeemeth by theſe Writs, that a Writ *de Libertate probanda* doth not lie, if not upon a Writ *de Nativo habendo* ſued out before by the Lord. 11 H. 4. 48. Gaſcoign. ac.

H But it appeareth in 12 *H.* 3. *Itin. North.* that the Villain ſued a *Libertate probanda*, *& obtulit ſe* at the fourth day againſt the Lord, and he did not appear, but made Default, for which, upon the Default of the Lord, the Villain was enfranchiſed; and he had a Writ unto the Sheriff, that he do not ſuffer the Lord to trouble him after: *quod vid.* in Title Villainage in the Abridgement; and *vid.* 47 *H.* 3. a good Caſe of that matter. Fitz. *Villainage* 19. Fitz. *Villainage* 3.

A And when he ſueth the *Nativo habendo*, he ſhall enter a Plaint before the Sheriff in the County, as he ſhall do if he ſue a Replevin by Writ unto the Sheriff, he ought to enter his Plaint before the Sheriff; ſo ſhall he do upon the *Nativo habendo*: and the Plaintiff ſhall recite how he is his Villain, and how that he fled from him, &c. And by the Writ of *Libertate probanda* that Plaint ſhall be removed before the Juſtices of Eyre, or before the Juſtices *de Banco*, and then the matter ſhall be tried before them, &c. Or the Lord may remove the Plaint by a *Pone* before the Juſtices of the Common Pleas, and thereupon he ſhall have Proceſs againſt the Villain, &c. for the Sheriff cannot determine the Title of Villainage in the County; and that is proved by the words in the Writ of *Libertate probanda*, viz. *Quia hujuſmodi probatio non pertinet ad te capiend'*, &c. [78]

B And it is good for the Lord, that when he ſueth the *Nativo habendo* unto the Sheriff, that forthwith he ſue his *Pone* unto the Sheriff, to remove the Plaint before the Juſtices of the Kings Bench: for if after the *Nativo habendo* ſued, the Lord ſue a *Pone* to remove the Plaint before the Juſtices *de Banco*, and before he delivereth the *Pone* to the Sheriff, the Villain ſueth *Libertate probanda*, and delivereth the ſame to the Sheriff, by which the Sheriff adjourneth the Plaint before the Juſtices in Eyre, and returneth the matter upon the *Pone* before the Juſtices of the King's Bench; now the Juſtices of the Bench ought not to proceed upon that *Pone* againſt the Villain, becauſe that the Sheriff hath returned, that he hath adjourned the matter before the Juſtices in Eyre by the Writ of *Libert. probanda*, *quòd vid. Hil.* 26 *E.* 3. and yet the 11 H. 4. 48. Gaſcoign. Old Nat. Brev. 46. 25 E. 3. 49. Villainage 124. that the party is without remedy, if not againſt the Sheriff.

Pone

Pone was of elder date than the Writ *de Libertate probanda*, but was not delivered unto the Sheriff before the *Libertate probanda*.

And if a man sueth several Writs of *Nativo habendo* against two, the two may joyn in a *Libertate probanda*, notwithstanding the several Writs. C

And a man can joyn in a Writ of *Nativo habendo* but two Villains, but in favour of liberty many Villains may joyn in a *Libertate probanda*. D

1 E.4.16. by *Martin*, all of the Blood may joyn: but if they be of the half-blood they shall not joyn. *Br. Villainage* 62.

And it seemeth that the Villain may sue a *Libertate probanda* before the Justices *de Banco*, as well as before the Justices in Eyre, although there be no such Writ in the Register. But if such Writ be made returnable before the Justices *de Banco*, it seemeth it is good, and they shall proceed thereupon as if it were before Justices in Eyre. E

6 E. 2. *Vill.* 26. after a Non-suit he was enfranchised during the Plaintiffs life. *Br.* Villainage 26.

In a Writ of *Niefe*, if the Plaintiff be Non-suit after appearance, the Defendant shall be for ever enfranchised; *quod vid. M.* 12 *E.* 2. and upon departure in despite of Court, where he appeareth, and saith he will seek Counsel, and afterward he is demanded, and maketh Default, there the Villain shall be for ever enfranchised: and so upon a *Retraxit*, If the Plaintiff say that he will not pursue his Writ of *Niefe*, the Defendant shall be enfranchised for ever. F

29 E. 2. *cont.* before Appearance. 19 E. 2. Vill. 31. 39 E. 2. *Fitz.* Vill. 34. the Pl. count upon a Confession, and the Def. acknowledge it, and after the Plaintiff was Non-suit, and *per Cur.* it is an Enfranchisement for ever. 30 E. 1. Vill. 46. *Harvy & Minton*, he is enfranchised but during the Marriage. *Broughton cont. Kay* took the difference where the Lord marrieth the Niefe, and where a Stranger marrieth her.

22 *Ass.* 34. *Br.* Vill. 21. A frankman marries a Niefe with Licence, the Lord enfeoffed *I.S.* the Husband died, the Wife is Niefe as before. *V.* 12. E. 2. Vill 35. *cont.* and there by *Drew* she remaineth Niefe, but the Seisure is suspended.

And if a Free-man marrieth a woman who is a *Niefe* unto another, she shall be for ever free, although that the Husband dieth, and she survive him, and that by *Britton* in his Book *in favorem libertatis*. And it stands with reason that the Law be such, because that she and her Husband are but one person in Law, and she ought to be of the same nature and condition to all intents as her Husband is; but the Husband is for ever free without any condition in Law or otherwise, and by consequence the Wife ought to be of the same condition and nature as her Husband is; and then if he be once clearly discharged of Villainage to all intents, she cannot be a *Niefe* afterwards without her own special act, as by Divorce, or Confession in a Court of Record, and that in favour of Liberty: for a Free-woman shall not be Villain, for taking of a Villain to be her Husband. G

13 H. 3. Vill. 4 E. she shall not be produced to prove Villainage during the Coverture. 30 E. Vill. 46. *cont.* 31 E. 3. Vill. 21. *cont.*

H In a Writ of *Nisi* it behoveth the Lord who sueth the Writ to bring with him two persons at the least who are of the Villains Blood, that will confess them to be Villains, otherwise the Writ shall abate: And what shall be sufficient proof, what not, see in the Title of Villainage in the Abridgments. But in a *Nativo habendo*, after the Plea is removed by a *Pone*, if the Defendant will confess himself to be Villain, then the Plaintiff needeth not to bring any proof thereof. 13 E. 1. vill. 38. 19 H. 6. 32. 2c. 19 E. 2. Vill. 32. Cousin Female shall not be brought to prove the Male Villain. 13 E. 3. Vill. 36. 2c.

I If two bring a *Nativo habendo*, the Non-suit of one of them is the Non-suit of them both; for Summons and Severance lieth not in that Writ. But in a *Libertate probanda* it is otherwise, for there the Non-suit of the one shall not prejudice the other. Old. Na. Br. 46. 2c. Old Tenures Br. Vill. 68.

K And it appeareth by the Register, that the Sheriff cannot seise the Villain by force of this Writ of *Nativo habendo*, although that the words of the Writ are, *Haberi facias A. nativum & fugitivum suum*; for these words give him power to hold Plea, and not otherwise, as it appeareth in 2 *H.* 4. in a *Faux* Imprisonment. But if the Villain doth confess unto the Sheriff that he is a Villain, then it seemeth reasonable that the Sheriff ought to seise him, saving the Opinion of that Book. But the Statute now maketh the matter clear, that the Lord may seise him, and so the Sheriff at his re- 2 H. 4. 24.

L quest. And the Process in the *Nativo habendo* is Summons, Attachment, and Distress.

M In a *Nativo habendo* the Plea was removed by a *Pone*, and the Sheriff returned thereupon *Non est inventus*, for which a *Capias* was awarded, and after upon return of *Non est inventus* a *Latitat* was awarded, upon a Surmise made that he was in a forein County. *P.* 7 *H.* 6.

N And in the *Libertate probanda* the Process is as upon the *Pone* sued to remove a Plaint in the County upon a Replevin, Sum', Attachment, and Distress. And the form of the *Pone* upon a *Nativo habendo* is such: [79]

Rex Vic', &c. Pone ad Petitionem Petentis, Loquel. quæ est in Com. tuo per Breve nostrum inter A. & B. quemidem A. clam. Nativum & fugitivum suum; & sum', &c. præd. B. *quid tunc sit ibi, præf. A. inde responsi. Et habeas ibi Sum', & hoc Breve, & aliud Breve.*

A And if the Villain do remain in Ancient demesn of the King in the Kings hands, and hath remained there by a year and a day, then the Lord cannot have nor maintain this Writ of *Nativo habendo* so long as he remaineth there: But if he hath not remained within the Ancient Demesn of the King

King a year and a day, but for half a year, or other time which doth not make a year and a day, then the Lord ſhall have ſuch Writ unto the Sheriff.

Rex Vic', &c. Præcipimus tibi quòd niſi A. *quem* B. *clamat Nativum & fugitivum ſuum in Com. tuo, per Breve noſtrum manſerit in Dominico noſtro de S. per unum annum & unum diem ſine calumnia, non remaneat Loquela prædict' in Com' præd', eò quòd manſerit in Dominico noſtro per minus tempus. Teſte, &c.*

But it appeareth by the Writ, that if the Lord claim him within the year and day that he came into the Ancient demeſn, that then the Villain ſhall not have advantage of his ſtaying there: but it ſeemeth that the Lord ought to claim the Villain within every year and day that the Villain ſtayeth within Ancient demeſn, as he ſhall make his continual claim to ſave his Entry into any Land. But if the Villain do remain in any other Mannor than in Ancient demeſn, which is in the poſſeſſion of other Lord than the King, and there ſtayeth a year and a day, or for many years, without any claim made by the Lord, notwithſtanding that the Lord may take and ſeiſe him, or have a ſpecial Writ of *Nativo habendo* againſt his Villain directed unto the Sheriff, as above is ſaid.

If a man purchaſe a Villain of another unto him and his B Heirs, and the Villain runneth from him, he ſhall not have this Writ *de Nativo habendo*, becauſe he hath no proof of his Blood who will confeſs them to be Villains unto the Plaintiff; and if he bring men of the Villains Blood, who confeſs them to be Villains to a ſtranger, and not to the Plaintiff, the ſame is not ſufficient proof. *Quære tamen.*

And the Lord may have a Writ unto the Sheriff to aſſiſt C him to diſtrain his Villains, and the Writ is; *Rex Vic', &c. Præcipimus tibi, quòd ſis in auxilium A. de F. ubi ipſe non ſufficit ad diſtringend' Villanos ſuos de* N. *ad faciend' ei conſ. & ſervitia debita & conſueta. Teſte, &c.* See the Statute *An* 1 *R.* 2. *c.* 6.

And when the King makes Tallage of his Ancient demeſn D Lands in his hands throughout the Realm, then the other Lords who have Ancient demeſn Lands of the King in Fee-farm ſhall have ſuch Writ to tax them; and the Writ is ſuch:

Rex Vic' &c. Quia Dominica noſtra per Angl. *talliari fecimus, tibi præcipimus, quòd ſi Manerium de* C. *aliquando fuerat Dominicum noſtrum, vel Progenitorum noſtror. quondam Reg.* Angl', *& hucuſque conſueverant talliari, tunc* A. *rationabile*

Talliagium

Tallagium habere fac' de liber, Tenentibus ſuis in Manerio prad' ſicut prius fieri conſuevit. Teſte, &c.

E And if the Kings Villains do convey themſelves out of the Mannor, then a ſpecial Writ ſhall be directed unto the Sheriff, that he enquire by the Oaths of honeſt and good men the Names of them, and where they abide, and that he make them return, and abide within the Mannors as before.

F If a Woman ſueth a Writ of *Libertate probanda*, the form of the Writ is ſuch: *Monſtravit nobis* Alicia, *quòd cùm ipſa libera fœmina ſit, &c. at parata libertatem ſuam, &c.* ut ſuprà.

Writ de Securitate Pacis.

G THis Writ lieth when a man is in fear or doubt that another will beat or aſſault him, and lieth properly where one man doth threaten another man to kill him, beat him, or aſſault him; then may he come into the Chancery, and pray to have ſuch Writ unto the Sheriff, and the form of the Writ is ſuch,

Rex, Vic' Linc' ſalut'. Quia A. de B. nobis gravit' conqueſt' eſt, quòd C. ei de corpore ſuo manifeſtè minat', Tibi præcipimus, quòd eidem A. de præf. C. firmam Pacem noſtram, ſecundùm conſuet' Angl' habere fac', ita quòd ſecur. ſit, quòd eid. A. de corpore ſuo per præf. C. vel per procurationem ſuam damnum vel periculum non eveniat. Teſte, &c. Or thus: *de incendio domorum ſuarum manifeſtè minat', Tibi præcipimus, &c. ita quòd, &c. eid. A. de domibus ſuis prad. per hujuſmodi incendium dampnum, &c.* And a man may have a Writ for the ſafety of his Body and for the burning of his Houſes all in one Writ. And he may have an *Alias*, and a *Pluries*, and Attachment againſt the Sheriff, if he does not his Office, &c.

H And by the ancient courſe of Law he ought to take his Oath upon a Book before he have this Writ, before a Maſter of the Chancery: But now they uſe to ſue forth ſuch Writs by their friends, who will ſue for them without any Oath made; and the ſame is ill done, becauſe they are many times ſued, more for Vexation than for any good cauſe; and the Juſtices of the Kings Bench will not grant any Writ for Surety of Peace, without making Oath that he is in fear of corporal damage: And the Juſtices of Peace ought not to grant any Warrant at the Suit of any one to find Sureties of Peace, if the party who doth require the ſame will not take his Oath that he requireth the ſame not for malice, but for the ſafety of his Body.

[80.] And if a man hath ſued a Writ againſt one directed unto A
the Sheriff, and the Sheriff take ſecurity of him to keep
the Peace, and afterwards he breaks the Peace againſt him
who demanded the ſame; he which demanded the Surety
of Peace ſhall have Attachment againſt him to find Sure-
ties; and the Writ is ſuch:

*Rex Vic' &c. Si A. fecerit, &c. pone, &c. B. quod ſit coram Juſtic' &c. oſtenſuros cùm præf. B. præd. A. de corpore ſuo mi-
noret', et præf. A. ad occaſionem Brevis noſtri de Pace inde habend' tibi detuliſſet, idem B. licèt Securitat. tibi præſiterit, quod per
ipſum vel procur' ſuum præf. A. de corpore ſuo damnum vel pe-
riculum non eveniret' id. B. nihilominus in præfat' A. apud VV.
vi & ar. inſult. fecit, & ipſum, &c. in noſtri contempt. mani-
feſt', et ipſius A. grave dampnum, et contr. pacem noſtram: ut
habeas ibi Pleg. et hoc Breve. Teſte, &c.*

And upon this Writ the Plaintiff ſhall recover damages,
and the Defendant ſhall be fined for his contempt, if he be
found guilty.

And if any one will have a Writ for ſurety of the Peace B
againſt any one who dwelleth within the Cinque Ports, then
he ſhall have a Writ out of the Chancery directed unto the
Conſtable of *Dover*, and unto the Warden of the Cinque-
Ports, and the Writ ſhall be ſuch:

*Rex dilecto et fideli ſuo N. Conſtabulario Caſtri ſui Dover', et Caſtri' Quinque Portuum ſuorum, ſalutem. Mandamus vobis,
quod auditâ querelâ A. de eo quod B. qui eſt de Libertate
Quinque Portuum, &c. minat', vocatiſque coram vobis partibus
præd', auditiſque hinc inde eorum rationibus, eidem A. ſuper
hoc debitum et ſubitum juſtitiæ complementum fieri faciatis,
prout de jure et ſecundum legem et conſuet. Portuum præditt-
rum fuer. faciend'. et aliàs in caſu conſimili fieri conſuevit.
Teſte, &c.*

But it is a common opinion, The Security which the She- C
riff ought to take of the party who ought to find Sureties
for the Peace, ought to be taken by Bond, that is to ſay, to
bind the party and his Sureties by Bond, that he keep the
Peace, and that he burn not the Houſes, &c. But now after
the Statute of 1 E. 3. cap. 6. which appoineth that certain
perſons ſhall be aſſigned in the Chancery to keep the Peace,
there are other forms of Writs, for the eaſe of the People
who will have the Peace againſt other perſons, which Writs
ſhall iſſue out of the Chancery; and ſome of them are di-
rected unto the Juſtices of the Peace, and unto the Sheriff,
and ſome are directed only unto the Sheriff: and theſe
Writs are of other forms, which is ſuch:

Rex

D *Rex dilectis et fidelibus suis* I, &c. *et sociis suis Justiciariis nostris ad Pacem nostram in Com.* S. *conservand. assign' salutem.* Or thus, *Custod' Pacis nostræ in Com'* S. &c. *& Vic' ejusd. Com', & eorum cuilibet, salutem.* Or thus, *Vic'* S. *salutem. Supplicavit nobis* A. *quòd cùm ipse de vita & mutilac. membrorum suorum, necnon de incendio domorum suar' per* E. *graviter & manifestè comminatus existat, velimus pro securitat. ipsius* A. *in hac parte provider': Nos supplication' prædi. annuentes vobis, vel tibi præcipimus firmiter injungentes, quòd præf'* E. *coram vobis, vel te, corporaliter venire faciatis, & ipsum ad sufficientes Manucapt' inveniend', qui eum manucapere voluerint sub certa pœna sibi per te vel vos rationabiliter imponend', pro quo nobis respondere voluerint, vel volueris;* Or thus, *Et ipsum* E. *ad sufficient' Securitat' inveniend', sub pœna centum lib. ad opus nostrum solvend', vel quilibet eorum sub pœna, &c. quòd ipse dampn' vel malum aliquod eidem* A. *de corpore suo, vel de domibus suis per hujusmodi incendium non fac', nec fieri procurabit, quovis modo compellatis, vel compellas. Et si hoc coram vobis vel te facere recusaverit, tunc ipsum* E. *proxim. gaol. nostræ committatis, vel committas, in eadem salvo custod. quousque hoc gratis facere voluerit. Et cùm Securitat. illam sic ceperitis, vel ceperis, nos inde in Cancellaria nostra sub sigillis vestris vel alicujus vestrum, vel sub sigillo tuo, distincte & aperte sine dilatione reddat certiores, certificetis, vel certifices indilatè, hoc Breve nobis remittentes, vel remittens.*

E And for this form of VVrit, when the Writ is in the plural number, the Writ is directed unto the Justices of Peace, or unto the Justices and Sheriff. And when it is in the singular number, the VVrit is directed unto the Sheriff only, or unto one Justice only.

F And if the Husband threaten his VVife to beat or to kill her, she shall have this Writ: See 25. b.

Supplicavit nobis A. *uxor* B. *quòd cùm ipse de vita sua & mutilatione membrorum suorum per prædi.* B. &c. [ut supra, usque ibi, *respond' voluris*] *quòd ipse præf.* A. *bene et honestè tractabit et gubernabit, ac dampn. et malum aliquod eid.* A. *de corpore suo, aliter quàm ad virum suum ex causa regiminis et castigationis ux. suæ licitè et rationab. pertin. non fac', nec fieri procurabit, quovis modo compellatis, &c.*

G And if a man be in a variance with other men, and he is in doubt that damage or hurt will come unto him, or his Servants or his Goods, by reason of this variance; then he shall have a special Writ against them directed unto the Sheriff, that he cause them to find Security that they do not damage or hurt the other in his Body, or his servants, or other

his goods, in a certain ſum, &c. And if they will not find Security, that then he arreſt them and keep them in Priſon, until they will find Sureties: And that the Sheriff certifie all that is done upon the ſame into the Chancery, upon pain, &c. as it appeareth by the Regiſter. And that Security ought to be taken by Recogniſance, as it ſeemeth; *tamen quære.* And when a man hath purchaſed ſuch Writ of *Supplicavit*, directed unto the Juſtices of Peace, or unto the Sheriff, or unto both, againſt any man, then he againſt whom the Writ is ſued may come into the Chancery, and there find Sureties in the Chancery, that he will not do hurt or damage unto him that ſueth the Writ; and then upon that he ſhall have a Writ of *Superſedeas* out of the Chancery, directed unto the Juſtices of Peace, or unto the Sheriff, or unto one of them, reciting how that he hath found Sureties in Chancery according to the Writ of *Supplicavit*, and reciting the Writ of *Supplicavit*, and the manner of Security that he hath found, and the Sum of mony in which they are bounden; commanding the Juſtices and Sheriff, that they ſurceaſe to arreſt him, &c. or compel him to find Sureties, &c. and if they have arreſted him for that cauſe, and for no other, that than they deliver him, &c. See the form of the Writ in the Regiſter. And if the party who ought to find Sureties cannot come into the Chancery to find ſuch Surety, then his friend may purchaſe a *Superſedeas* in the Chancery for him, reciting the Writ of *Supplicavit*, &c. and that ſuch a one and ſuch a one are bounden for him in the Chancery in ſuch a ſum, that he ſhall keep the Peace according to the Writ of *Supplicavit*: and the Writ ſhall be directed unto the Juſtices of the Peace and Sheriff, that they or ſome of them take Surety of the party himſelf, according to the Writ of *Supplicavit*, for to keep the Peace, &c. and that then they ſurceaſe to arreſt him; and if they have arreſted him for that cauſe, that they then deliver him. A

[81]

And ſometimes the Writ of Supplicavit is made returnable into the Chancery at a certain day: and if it be ſo, then if the Juſtices do not certifie the Writ, nor the Recogniſance, and the Security which is taken, the party who ſued the *Supplicavit* ſhall have a Writ of *Certiorari* directed unto the Juſtices of Peace, to certifie the Writ of *Supplicavit*, and what they have done thereupon, and the Security which is found, &c. and ſo the party ſhall have ſuch *Certiorari* unto the Juſtices of Peace, to certifie the Security taken upon *Supplicavit*, although the Writ of *Supplicavit* be not returnable in the Chancery. B

And

C And so if a man demanded surety of Peace in the County against any man, he shall find Sureties in the County before the Justices of the Peace, &c. he who demandeth the security may sue a VVrit of *Certiorari* directed unto the Justices of Peace, to remove the surety of Peace, and the Recognisance taken thereupon; and to certifie that Recognisance, and security taken, under the Seals of the Justices of Peace, or one of them. And if the *Certiorari* be sued upon a VVrit of *Supplicavit*, then the *Certiorari* shall rehearse the VVrit of *Supplicavit*: and if it be sued upon surety demanded in the County without a *Supplicavit* sued, then the form of the VVrit of *Certiorari* is such:

Rex Custodibus Pacis suæ in Com. L. & eorum cuilibet, sal'. Volentes certis de causis certiorari super tenorem cujusd. Securitatis Pacis nuper coram R.B. *& sociis suis Custodibus Pacis nostræ, et Just. nostris ad diversa Felon', Transgr. et Malefacta in Com. L. audiend' et terminand' assign', de* R. de W. *de eo quod ipse damn. vel malum aliquod* B. *de* F. *aut alicui populo nostro non fac' nec fieri procurabit, ex officio vestro capt', quæ quid. Securitas penes vos residet, ut dicit'; vobis mandamus, quòd nos inde in Cancell. nostra sub sigillis vestris vel unius vestr. distinct. et apert. sine dilatione reddatis certiores, hoc Breve nobis remittentes. Teste, &c.*

D And when the VVrit of *Supplicavit* is directed only to the Sheriff, then the *Certiorari* shall be directed unto the Sheriff only, to make return of the security found, if he have taken any security, &c.

And if a man find Sureties to keep the Peace against certain persons before the Sheriff, without any VVrit of *Supplicavit* sued by him who demandeth surety, and without the VVrit used of ancient form; then the party who demanded the surety may have a *Certiorari* unto the Sheriff, to certifie the security taken by him into the Chancery, &c. without making mention in the *Certiorari* of any VVrit sued forth to cause the Sheriff to take such security; and by that *Certiorari* it seemeth, that the Sheriff *ex officio* may cause the party to find surety to keep the Peace, if any one pray the Sheriff to have such surety, and that the Sheriff bind them by Recognisance, and that he certifie the same into the Chancery by the *Certiorari*: for if he certifie an Obligation taken for security, that certificate cannot make the Bond to be a thing upon Record, and the party cannot be bounden unto the King but by matter of Record, or unless that he will come into the Court, and confess the same to be his Deed, and pray to have the same enrolled. And it

Vid. 12 H. 7. 17. by Fineux, by the Common Law the Sheriff is *Conservator Pacis.*

Vid. Lamb. 110. 11. and now by the Statute of 33 H. 8. cap. 39. it is clear that Bond shall not be taken.

[82] *Vide 7 H. 4. 34. ac. Crompton 35.1]*

ſeemeth that the Law is ſuch, becauſe that by the Common Law the Sheriff is Conſervator of the Peace, and hath the keeping and the cuſtody of the County for the time that he is Sheriff; and the ſame appeareth by his Commiſſion and Letters Patents which he hath, the words of whoſe Patent are ſuch:

Rex, &c. Commiſimus vobis Cuſtodiam, &c. and by that he takes his Authority, the which is a matter of Record, as the Commiſſion which was made to them who ſhall be Juſtices of the Peace, the which Commiſſion giveth them Authority to hear, determine and enquire of all thoſe things which are done againſt the Peace. And by reaſon of that Commiſſion they have power to bind men by Recogniſance to keep the Peace, upon Complaint made unto them by any perſon: And yet there is not expreſs Authority given them by the Commiſſion to take that Recogniſance, but it followeth, that becauſe they have authority to cauſe men for to keep the Peace, and to hear and determine offences againſt the Peace, they have power to bind men by Recogniſance ſo to do; for every thing which they have done by virtue of their Commiſſion ought to be taken as a matter of Record. And by the ſame reaſon the Sheriff, becauſe that his Patent is of Record, and he is Conſervator of the Peace in every place, every Obligation which he taketh for to keep the Peace ſhall be in Law taken for a Recogniſance, and eſpecially when it is certified in the Chancery by *Certiorari*: But yet all the Pleas that are holden before him in the County are not of Record, nor Pleas holden before him in the County by VVrit of *Juſticies* are not taken as matters of Record; for theſe Pleas are holden before him by reaſon of the Courts which he hath by reaſon of his Office, as the County and Hundred Court, &c. But the Leets and Torns which are for the Commonwealth, as for keeping of the Peace, theſe are Courts of Record, and by conſequence for keeping of the Peace the Sheriff is Judge of Record, and may take Recogniſance for the keeping of the Peace *ex officio*; but if he ſo do, and take Recogniſance upon a Writ of *Supplicavit*, or other VVrit directed unto him to take Sureties for keeping of the Peace, it is the ſtronger; but give credit to better reaſon, and therefore *quære* thereof.

Writ de Auxilio ad Filium ſuum Militem faciend. vel ad Filiam Maritand.

A THe form of the Writ is ſuch:

Rex Vic' &c. Præcipimus tibi, quòd juſtè, &c. fac. habere A. rationabile Auxilium de Militibus & liberis Tenentibus ſuis in Balliva tua, ad primogenit. fil. ſuum Milit', faciend', vel ad primogenit. filiam ſuam maritand', juxta formam Statuti de communi conſilio regni noſtri Angl. *inde proviſ. Teſte, &c.*

B And a man ſhall not have this Writ before that his Son hath accompliſhed the age of fifteen years, nor for to marry his Daughter before ſhe be of the age of ſeven years, as appeareth by the Statute of *Weſt.* 1. *cap.* 35.

C And he who holdeth his Lands by a Knights-fee ſhall pay 20 s. unto the Lord, to make his Son a Knight, or for to marry his Daughter, and no more.

And the Tenant who hath Lands of the yearly value of 20 l. holden in Socage, he ſhall pay 20 s. unto the Lord to make his Son Knight, or for to marry his Daughter.

And he who holdeth by half a knights fee ſhall pay 10 s. and he who holdeth Lands in Socage of the value of ten pounds by the year ſhall pay 10 s. And ſo according unto the rate of the value of the Socage-Land, and according unto the quantity of a Knights fee, he ſhall pay his Aid, and that by the Statute before-mentioned.

But this Aid, to make the Son a Knight, or to marry his Daughter, the Lord was to have by the Common Law of his Tenants, and the Statute puts it only in certainty. And D the Lord may diſtrain his Tenant for this Aid, and even for the ſame if he will; and he need not for to ſue this VVrit unleſs he will. And this Writ is directed unto the Sheriff, E and he may ſue an *Alias*, and a *Pluries*, and an Attachment againſt the Sheriff, if he will not aſſiſt the Lord to diſtrain his Tenants for this Aid.

F And the King's Tenant in like manner ſhall pay Aid unto the King to make his eldeſt Son a Knight, or for to marry his eldeſt Daughter, &c. *viz.* every one who holdeth by a Knights fee 20 s. and he who holdeth by half a Knights fee 10 s. and ſo according to that rate.

And in like manner every one who holdeth of the King in Socage 20 l. Land ſhall pay 20 s. to make his eldeſt Son Knight, or for to marry his eldeſt Daughter. And he who holdeth 10 l. Land in Socage ſhall pay 10 s. and that is ap-

pointed by the Statute *de Provisionibus*, *An.* 25 *E.* 3 *cap.* 10. And the Statute ſetteth the Aid certain, becauſe that before the ſaid Statute the King would diſtrain for more to make his Son a Knight, or to marry his Daughter; but now the Statute appointeth that the King ſhall have no more.

And if the eldeſt Son dieth before he cometh to the age G of fifteen years, or before the Lord hath levied the Aid to make him Knight, then the Lord ſhall have Aid for the younger Son, to make him Knight when he cometh to ſuch age, and yet he is not *primogenitus filius*, as the Writ doth ſuppoſe, but he is the *primogenitus* which is then alive, and that is ſufficient, for he ought for to be Heir apparent. And ſo it is if the eldeſt Daughter dieth before the Lord hath levied Aid of his Tenants for to marry her, then he may levy Aid for the next eldeſt which is then living, after ſhe is of the age of ſeven years.

And by the Statute the Writ which ſhall be directed unto H the Sheriff to levy ſuch Aid for the Lord, ſhall mention that the Son is of the age of fifteen years; and if it be for the Daughter, it ſhall mention ſhe is of the age of ſeven years, otherwiſe the VVrit is not good. But that form is not in the Regiſter, for it ſeemeth the Regiſter was made before the Statute of *Weſt.* 1. and therefore the VVrit ought to be according as the Statute ordaineth it.

And if the Lord have Aid to make his Son Knight, or to I marry his Daughter, and dieth before he hath paid the ſame, [83] then the Son or Daughter ſhall have an Action of Debt againſt the Fathers Executors for the money; and if the Executors have no goods of the Lord, then the Daughter ſhall See after 122 g. have an Action of Debt againſt the Fathers Heir, for ſo much of the money as ſhe wanteth of that which her Father had levied for to marry his Daughter: And that is by the Statute of *Weſt.* 1 *ca.* 35. And he who holdeth by grand Serjeanty or A petit Serjeanty ſhall not pay Aid to make the Son a Knight, or to marry the Daughter, as it appeareth *M.* 11 *H.* 4. 32.

And if the Lord doth levy Aid for the Marriage of his B Daughter, and afterwards marrieth her, then the Daughter ſhall not have an Action of Debt againſt the Fathers Executors for the money levied, &c. But if the Daughter be not married in the life-time of the Father, &c. by him, then the Action doth lie. And ſo it ſeemeth, that if the Son be not made Knight in the life-time of the Father, that he ſhall have an Action againſt the Fathers Executors for the money levied to make him Knight.

Writ

Writ de Scutagio habendo.

C THis VVrit for Eſcuage lieth in caſe where a man holdeth Lands of the King by Knights Service, to which Homage, Fealty and Eſcuage is appendant: and he who holdeth of any Lord by ſuch Service, who holdeth over of the King by the like Services, when the King maketh a Voiage-Royal in War againſt the *Scots* or againſt the *Welſh* in proper perſon, or by his Lieutenant, then he who holdeth by Knights Service ought to go in perſon, or find a man to go for him, in the War with the King, or his Deputy in that War, for forty days, at his own coſt: and if he do not go, nor find a man ſo to do for him, then he ſhall pay for that default, and not doing of his Service, ſuch ſum of money as ſhall be aſſeſſed by Parliament; for a Knights fee ſo much, and for half a Knights fee ſo much; and ſo according to that rate. And then he who holdeth by a whole Knights fee ſhall pay ſo much for Eſcuage as the Parliament doth aſſeſs that a whole Knights fee ſhall pay, if he hath not done the Service; and he who holdeth by half a Knights fee ſhall pay according to the rate; and thoſe who have done their Services and gon in the War, ſhall not pay any thing. And that ſum of money is called Eſcuage, *Servitium Scuti.*

Vide Lit. 19, and 20.

Vide 16 El. Dyer 329. that he who holdeth a the moity of a Knights fee, holdeth by Knights Service, and ſo it ſhall be intended, if it be not found to the contrary.

D And if a man holdeth of the King by Knights Service, and to go with him in his War, &c. then that Lord ſhall have Eſcuage of his Tenants who hold of him by the like Service; but the ſum which he ſhall have and levy ought to be aſſeſſed by Parliament (as afore is ſaid) before he diſtrain for the ſame.

E And if a man hold of any Lord, to guard his Caſtle in time of War, or to blow a Horn in the time of Invaſion of Enemies, the ſame is Knights Service: but it ſeemeth that for thoſe Lands, they ſhall not pay Eſcuage, if they do not their Services, but the Lord ſhall diſtrain them for not doing their Service, and ſhall have recompence for the ſame. So that none ſhall pay Eſcuage but only thoſe who hold by ſuch Services, to go into the War, or to find a man to go, &c. *tamen Quere.*

F And if he who holdeth of the King by Knights Service to go with the King in War, do his Service, &c. then he ſhall have a Writ for him, directed unto the Sheriff, to have Eſcuage of thoſe who hold of him by the like Service. And the form of the Writ ſhall be ſuch:

Rex Vic' &c. quia dilectus & fidelis noster W.D. habuit ser. vic. suum nobiscum per preceptum nostrum in Exercit' nostro Scotiæ anno regni nostri primo; or thus, *fuit nobisc. per preceptum nostrum in Exercit', &c. an', &c. sicut per Rotulos h. Constabularii n. stri Exercitus nostri prad', nobis constat*; or thus, *fecit suum nobisc. pro servic' suo in Exercitu nostro Scotiæ an', &c. sicut per Certificat' Thesaurarii et Baronum nostrorum de Scaccario in Cancellar' nostra de mandato nostro missum nobis constat: Tibi præcipimus quòd eidem W.D. habere fac. Scutagium suum de Feudis militum quæ de ipso tunc tenebant in Bell. sua, viz. ad 20 solid. de Scuto pro Exercitu prædict: et hoc nullatenus omittas. Test', &c.*

And by that it appeareth, that if the King's Tenant goeth with the King's Lieutenant or his Deputy in War, that the Constable of the Host ought to certifie the same into the Chancery, before the King's Tenant shall have a Writ to levy the Escuage of his Tenants; and if the King's Tenant do agree with the King for his going, &c. then the King ought to be certified thereof in the Chancery by the Treasurer and Barons of the Exchequer, before that he shall have a Writ to levy the Escuage of his Tenants. G

And by that it appeareth, that if the King's Tenant do not go in the voiage, nor agree with the King for that voiage, that then he shall not have Escuage of the Tenants, nor distrain the Tenants for the same. H

And if a man holdeth of the King by Socage, and other hold of him by Knights Service, and the King maketh a voiage in War into *Scotland* and *Wales*; now it seemeth he shall not have Escuage of his Tenants, if he goeth not with the King in the voiage: but if he goeth with the King or his Deputy, or agree with the King for that voiage, then it seemeth he shall have Escuage of his Tenants, and shall have the aforesaid VVrit. And it is not material whether he hold by Knights Service, or in Socage. I

And if there be Lord, Mesn, and Tenant, and each holdeth of the other by Knights Service, if the Tenant go into *Scotland* by the King's common Summons, then the Mesn shall not pay Escuage: *quod conceditur per Cur. Trin. 5 H. 5.* K

[84] And if a man holdeth Lands by such Service, that he shall pay a Penny, or a pair of Spurs, when Escuage runneth, &c. the same shall not properly be Escuage, as it appeareth in 15 E. 2. Title Avowry in the Abridgments. A

Vid. Title Avowry. 215. See before 33 E.

And *vid.* 19 R. 2. that Garder of a Castle doth countervail Escuage, so that his Heir shall be therefore in VVard, and so of grand Serjeanty; and yet it seemeth they shall not pay Escuage, *Quod vid.* in Title Gard. J

And

C And in Title *Quare impedit*, in the Abridgments, that Eſcuage certain doth not make Knights Service, *Hil.* 5. 3.

D And if there be Lord, and many ſeveral Meſnes and Tenants, and each holdeth by ſeveral Knights ſervice, if the Tenant paravail of the Land doth the Services, and goeth with the King in War, &c. the ſame ſhall excuſe all the other Meſnes; for for one Land but one Service can be demanded, *viz.* to go, or to find a man to go, &c. and ſo the Meſne paramount here is excuſed, becauſe that the Service is done by the Tenant, &c.

E And when the King will levy Eſcuage of his Tenants, he uſeth to grant a Commiſſion to certain perſons. And the form of the Commiſſion is ſuch:

Rex dilectis, &c. Aſſignavimus vos ad Scutag. noſtr. de Exercitu noſtro Scotiæ, *an. reg. noſtri primo levand. & colligend. in colligend' in Com. K. tam infra Libertat', quàm extra, de Feodis Milit. quæ tunc tenebant de nobis in capite, ſive de Eſcaetis & Honorib. in manus noſtr. tunc exiſt', ſive de perquiſitis progenitor. noſtror', aut noſtri, quàm de Feodis Milit' quæ tenent' de Archiepiſcopatib', Epiſcopatib', Abbat', Prioratib'. et aliis Dignitatib. vel Offic. Eccleſiaſt. quibuſcunque, quæ tunc in manus noſtras fuer', ac de hæreditat. Hæredum infra ætat. & in cuſtod. noſtra exiſtent', viz. xl. ſolid. de quolib' Feodo pro Exercitu ſuprad'; ita quòd omnes denarii inde provenient. habeantur ad Succurr. noſtr' particulat. ad citius quod poterit is nobis ibid. ſubvenend'. Et quia quamplures de Feod. prad. ad manus diverſor. devenuer' tam temporib. progenitor. noſtror. quàm noſtro, quadam viz. per deſcenſum hæreditar', tam in partes quàm alio modo, & quadam per alienac' inde diverſimodè factas. Aſſignam. vos ad inquirend' per ſacrament. probor. & legal. hominum de quolib. Hundredo in Com' prad. tam Milit' civilter gladio cinct', quàm alior', per quæ rei veritas melius ſciri poterit, qui tenuer'. Feoda militaria tempore prad' in rad. Com', aut aliquam partem Feodor. eorund', ut de Corona noſtra Angliæ, vel de perquiſitis progenitor' noſtror. & noſtro, et de Archiep', Epiſcopat', Abbat', Prioratib', et aliis Dignitatib, et Officiis antedictis, ac etiam de hæreditatib. Hæred. prad. tunc infra ætatem exiſten. & quot Feod. & quantas partes Feodi quilib. Tenens hujuſm. tunc tenuit, et in quibus Villis diſtinctè et qui fuer' anteceſſores illor. qui tenent per deſcenſum hæreditar. et qui alio modo, ac etiam qui Hæredes fuer. infra ætatem, & in cuſtod. noſtro, et qui Archiepiſcopat', Epiſc. Abbat. & Priorat. & aliis Dignitat. quarumcunque vel Officia temporalia occupant, temporal. quæ cuſtod. ad nos pertinet. Et ideo vobis in fide quâ nobis tenemini firmiter injungendo mandam. quod ad certos dies per vos præfixos & expletis in forma prad. & Inquiſi.*

Inquisition. super præmiſ. diſtinctè et apertè factas, quæ de ſingulis Feodis, & de nominib' et cognominib. eo ſingulat. quæ' tenentium dum integr. tenebantur, et eor. qui poſtmod. ea ſucceſſ. vel tenuer' poſt partitiones eor' int. hæred' participes, vel per alienationes, ut præd. eſt, apertam faciant mentionem, habeat' ad Scacc. eor. præd' circa feſt. Paſc. proxim. futur' ſub ſigillis veſtris et ſigillis eor. &c. fact. fuer'. Mandam. etiam Vic. noſtro Com' præd', quòd ad certum, &c. venire fac' tot et tales prob. et legal. homines tam Milit' gladio cinctos quam alios de Balliv. ſua, tum infra Libertat. quam extra, per quos rei veritas melius ſciri poterit et inquiri, et quod vobis in præmiſ. pariat. et intendat. Mandam. etiam Theſaurario et Baronibus noſtris de Scaccar. præd', quòd hujuſm. Feod' ad Scaccar. præd' reperta, Terras et tenement. in Com' præd' tangentia, vobis celeriter in ſcriptis mittant in evidentium, & pro majore expeditione præmiſſorum. In cujus &c. Teſte, &c.

And a *Venire facias* ſhall be ſent unto the Sheriff cloſe upon this Commiſſion, and another Writ cloſe unto the Treaſurer and Barons, &c. *quòd Feoda mittant*, &c.

And now it appeareth by this Commiſſion, that the King ſhall have Eſcuage of the Tenants who hold of theſe Lands or Mannors which the King hath in his hands by reaſon of Ward, or by reaſon of the Vacancy of a Biſhoprick, &c. Or if he have an Eſtate for years in the Seigniory, he ſhall have Eſcuage of the Tenants, &c.

*And ſo ſhall another Lord have, if he have a Term for years or for life in the Seignibry, if he go in voyage with the King in War into *Scotland*, &c. he ſhall have Eſcuage then of the Tenants which hold of him by Knights Service; for the Tenant is not bound to go, but for to defend his Lord, or to find a man for to defend him; and then if the Lord do not go into the War, the Tenant is excuſed.

* 19 E. 2. *Br. Tenures* 61. Leſſee for life may do Eſcuage. 6 E. 2. *Gard.* 122. he ſhall have the Ward, becauſe it is a Profit; he ſhall have Eſcuage, becauſe it is a Suit real, by *Willie. Scrops cont.*

[85]

Writ de Securitate inveniend. quòd ſe non divertat ad partes exteras, ſine Licentia Regis.

Vid. 1 Eliz. Dyer 165.

BY the Common Law every man may go out of the Realm to Merchandiſe, or on Pilgrimage, or for what other cauſe he pleaſeth, without the King's leave; and he ſhall not be puniſhed for ſo doing; but becauſe that every man is of right for to defend the King and his Realm, therefore the King at his pleaſure by his Writ may command a man that he go not beyond the Seas, or out of the Realm, without Licenſe; and if he do the contrary, he ſhall be puniſhed for diſobeying the King's Command. And it ſeemeth that this Command may

may be made by the King's VVrit under the Great Seal, and alſo under the Privy Seal, or his Signet; for by the Law the Subject is bounden to take notice of every of the King's Seals in ſuch caſe, as well as of the Great Seal.

B And there are two manners or forms of ſuch VVrits; one is directed unto the party, and the other unto the Sheriff, commanding him that he cauſe the party to find ſecurity that he ſhall not go out of the Realm without the King's Licenſe. And the firſt Writ is ſuch:

Rex L. *de B. ſalutem. Quia datum eſt nobis intelligi, quòd tu verſus partes exteras abſque Licentia noſtra clàm deſtinas te diverter', et quamplura nobis & Coronæ noſtræ præjudicialia ibidem proſequi intendis, in noſtri contemptum et præjudicium, ac contra proclamationes et inhibitiones noſtras indè ſæpius factas: Nos, hujuſmodi contemptui et præjudicio obviare volentes, tibi diſtrictè ſub periculo quod incumbit prohibemus, ne verſus partes exteras abſque licentia noſtra ſpeciali aliqualiter te divertas, nec quicquam ibidem proſequi attemptes ſeu attemptari fac', quod in noſtrum ſeu dict' Coronæ noſtræ præjudic' cedere valeat quovis modo, nec aliquem ibidem mittas et hac cauſa. Teſte, &c.*

C And alſo the King by his Proclamation may inhibit his Subjects, that they go not beyond the Seas, or out of the Realm, without Licenſe, and that without ſending any VVrit or Commandment unto his Subject; for perhaps he cannot find his Subject, or know where he is, and therefore the King's Proclamation is ſufficient in it ſelf. And if the Subject do contrary thereunto, it is a contempt, and for ſo doing he ſhall be fined to the King. 12 & 13 Eliz. Dyer 296. 21.

D The other form of VVrit directed unto the Sheriff is ſuch:

Rex Vic', &c. Quia datum eſt nobis intelligi, quod A. B. *Clericus, verſus partes exteras, ad quamplura nobis et quampluribus de populo noſtro præjudicialia et dampnoſa ibid'. proſequend', tranſire proponit: Nos, malitiæ ſuæ reſiſt. volentes in hac parte, tibi præcipimus, firmit. injungentes, quod præd. A. B. coram te corporalit. venire fac', & ipſum ad ſufficientes Manucapteres inveniend', qui eum manucapere voluerint, ſub certa pœna eis per te rationabilit. imponend', pro qua nobis reſpond. volueris*; Or thus, *& ipſum A. B. ad ſufficient. ſecuritatem inveniend', ſub pœna centum librar' ad opus noſtr, ſolvend', vel quilibet eor. ſub pœna, &c. quòd ipſe verſus aliquas partes exteras ſine licentia noſtra ſpeciali ſe non divertat, nec quodcunque ibid' proſequatur aut proſequi vel attemptari facere præſumet, quod in noſtri contempt' vel præjudic' aut populi noſtri dampn. cedere valeat, nec aliquem*

aliquem aut aliquos ibid' mittat ex hac cauſa, quare mand. compellar. Et ſi hoc coram te fac. recuſaverit, tunc ipſum A. B. prox' gaol. noſtra committas, in eâd' ſalvâ cuſtodiend' quouſque hoc gratis fac' voluerit. Et cum Securit. ad. ill. ſic ceperis, tu inde in Cancellar. noſtra ſub ſigillo tuo diſtincte et aperte ſine dilatione redd. certiores, vel certifices indilate, hoc Breve nobis remittens. Teſte, &c.

And this Writ may be directed unto Juſtices of the Peace, or unto the Sheriff, or unto both; and the form may be as the Writ of *Supplicavit*, which is directed unto the Juſtices of the Peace and unto the Sheriff, to cauſe him to find Sureties, &c. I

And every one upon a Surmiſe made unto the Chancellor may ſue forth this Writ for the King; and then the party againſt whom it is ſued may come into the Chancery, and obtain Licenſe by Letters Patents, or by Letters under the Privy Seal or Privy Signet: and the Licences are good although they be not under the Great Seal, becauſe thoſe Letters will excuſe his contempt. And ſuch Licences are called Paſs-ports. And now by the Statute of 5 R. 2 c. 2. it is ordained, That no perſon paſs out of the Realm without the Kings leave but thoſe who are excepted in the Statute, and therefore ſee the Statute.

Writ of Treſpaſs.

THere are two manners of Writs of Treſpaſs. One is of a Treſpaſs which is Vicountiel, and is directed unto the Sheriff, and is not returnable, but ſhall be determined in the County before the Sheriff; and in this VVrit he ſhall not ſay *Quare vi et armis*, &c. but the form of the VVrit is ſuch:

Rex Vic' Line ſalut. Queſtus eſt nobis W. de B. quod C. in ipſum W. apud N. inſultum fecit, et ipſum verberavit, vulneravit,
[86] *et malè tractavit, et alia enormia ei intulit, ad damnum ipſius W. non modicum et gravamen; et ideo tibi præcipimus, quod Loquel. illam audias, et poſtea indè juſtè deduci facias, ſi ampliùs clamorem indè audiamus pro defectu juſtitiæ. Teſte, &c.*

And by this Writ the Sheriff ſhall hear and determine that Treſpaſs, &c. by Inqueſt according to the Common Law; and this Writ is in effect a Commiſſion unto him, and he may declare upon this VVrit unto his damage of 20 *l.* or more.

And another form of VVrit for Goods is ſuch; A

Rex Vic' &c. Queſti ſunt nobis W. et B. Executores Teſtamenti

C. ad

C. quod R. & F. bona et catalla quæ fuer. ipsius C. ad valent' &c. sub custodia ipsor. Executor. apud N. inventa, cepер. et asportaver', et alia enormia ei intuler', in retardat. Executi. Testamenti pred', Et ideo, &c. ne amplius, &c.

B And a man may sue other Writs of Trespass upon the Case in the County before the Sheriff; and the forms of the Writs are such:

Rex Vic' &c. Questus est nobis A. quod cum B. centum oves suas pred. A. super terr' et pastur' suam apud N. per unum annum moratur. vel custodiend' sub certis conditionibus liberaret, pred' B. oves illas ibid. super terram ipsius A. existentes sine licentia et voluntate ejusd. A. infra termin. pred' cepit et abduxit, et alia, &c. ad dampnum, &c. By which Writ it appeareth, that he cannot take back the Cattel again, if the Plaintiff perform the Conditions.

C If a man borrow a certain sum of Money, and doth pawn Goods for the same, and he offereth the Money again unto the party, and prayeth that the Pawn may be delivered back to him, and the other refuse to do it: he shall have an Action of Trespass upon the Case in the County before the Sheriff, to determine the matter, &c.

D If a man doth deliver unto another a Bull, or Oxen, or Cows, to make his benefit of them for a certain time upon condition; if he against the will of him to whom they were delivered take them back again within the time, he shall have an Action of Trespass against him, directed unto the Sheriff, to determine that Cause.

E If a man do distrain Kine which are with Calf, and impound them against Law for so long time that they cast their Calves, then he shall have a special Writ directed unto the Sheriff, rehearsing the special matter, to end the same before the Sheriff in the County.

F And so if a man have a Salt-pit by the Sea-coasts, and another erecteth a Wall betwixt the Sea and the Salt-pit, if the other person throws down the Wall, by which the Sea-water over-floweth the Salt-pit, he shall have a special Writ directed unto the Sheriff, to end the matter in the County.

G And so for every manner of Trespass done, a man may chuse to have such a Writ directed unto the Sheriff, to end the matter before him in the County, or to sue a Writ unto the Sheriff, returnable in the Common Pleas or the Kings Bench.

H And if the Writ of Trespass be returnable, then the Writ shall be of another form, for then these words *Vi et armis* shall be in the Writ; and if it want those words, the Writ

shall

ſhall abate, if they be not Writs of Treſpaſs upon the Caſe; which Writs of Treſpaſs ſhall not have theſe words *Quare vi & armis* in the Writ, although they are returnable in the Common Pleas or Kings Bench; and if they have the words *Quare vi & armis* in the Writs, it ſhall be good cauſe to abate the Writs. And the form of a VVrit returnable in the Kings Bench is ſuch:

I *Rex Vic'* &c. *Si A. fecerit ſe &c. tunc pone per vad. & ſalvos pleg' B. quòd ſit coram nobis in Octavis S. Mich', ubicunque fuerimus tunc in* Angl'. And if it be returnable in the Common Pleas, then thus: *Coram Juſtic' noſtris apud* Weſtm. *in Octavis S. Mich'. oſtenſ. quare vi et armis in ipſum A. apud N. inſult' fecit, et ipſum verberavit, vulneravit, et malè tractavit, ita quod de vita ejus deſperabatur, & alia enormia ei intulit, ad grave dampnum ipſius A. & contra pacem noſtram. Et habeas ibi nomina pleg', & hoc Breve. Teſte* &c.

And if a man do impriſon another, then the form of the K Writ of Treſpaſs is: *Oſtenſ. quare vi et armis in ipſum A. apud N. inſult. fecit, & ipſum vulneravit, impriſonavit, & malè tractavit, & alia* &c.

And it is not material whether he be wounded or not, for the form of the Writ is ſuch: but the Damages ſhall be increaſed for the ſame, if he do recover. And if he do impriſon him until he pay a Fine for his deliverance, then the form is; *Quare vi et armis ipſum A. apud N. cepit, impriſonavit, et malè tractavit, et ipſum in priſonâ ibid', quouſque Finem per tantum pro deliberatione ſua habend' cum præf. B. fecit, detinuit, & alia enormia ei intulit*, &c.

2 H. 4. 13. 7 E. 6. Dy. 70. 30 E. 3. 38. *per Thirle.*

And a man may have one Writ of Treſpaſs for divers L Treſpaſſes, &c. as for breaking of his Cloſe, cutting of his Trees, fiſhing in his Ponds, beating of his Servants, and taking of his Goods and Chattels, and all in one Writ; and for cutting of his Wood, and for taking his young Hawks, and the form of the Writ is: *Quare vi et armis boſcum ipſius A. apud N. intravit, et treſ pullos Eſpervorum ſuorum, pretii tanti, nuper in eod. boſco nidificantium cepit et aſportavit, & alia enormia*, &c.

And by this Writ it appeareth that the property of the Hawks are in him who hath the Land by the word [*ſuorum*] in the Writ.

[87] And for hunting in a Warren the form is; *Quare*, &c. *Warrenam ipſius A. apud N. intravit, et in ea ſine licentia et voluntate ſua fugavit, & Lepores, Cuniculos, Phaſianos, & Perdices cepit & aſportavit*, &c. N

And

A And if a man hunt and take another mans Conies in his Cloſe which is no Warren, then the form of the Writ is: *Quare &c. Clauſum ipſius A. apud N. fregit, et ipſum ſine licentia & voluntate, &c. ſuig' & ros Cuniculos pr. tis tanti, cepit et aſportavit &c.*

And by this Writ it appeareth that he who hath the Land hath no property in the Conies. And ſo of a Park: 3 H. 6. 55. ac *Quare &c. Parcum ipſius A. apud N. fregit, & in eo, &c. fugavit, et feras cepit & aſportavit.* Or thus, *Quare, &c. Herbam ipſius A. apud N. nuper creſc', vel Bladа ipſius A. apud N. nuper creſcentia, ad valentiam decem librar' cum quibuſdam Averiis depaſtus fuit conculcavit, et conſumpſit, et alia, &c.* And he need not ſay in the Writ, *Quare, &c. Clauſum fregit, &c. & Herbam, &c.*

B And there is another form of Writ of Treſpaſs, *De ſola*
C *ſeſſo et carbonib. maritimis aſportatis.* And another form of Writ in the Regiſter, *De equo & catall. arreſtatis ſine cauſa, quouſque Finem fecerit.*

D And another form, *De domo fracta et maremio aſportat'.*

E And the Writ of Treſpaſs for Executors for Goods taken out of their poſſeſſion, which is ſuch:

Rex &c. Si A. & B. Executores Teſtamenti C. fecerint, &c. tunc pone &c. quare quatuor Boves, qui fuer. ipſius C. pretii centum ſolid', ſub cuſtodia ipſorum Executt. apud N. inventa cepit et abduxit, & Bladа quæ fuer. prad' C. ibid. creſcentia meſſuit, et Bladа illa ac alia bona et catall. quæ fuer. ipſ'd. C. ſub cuſtodia eorum Executor. inventa cepit et aſportavit, et alia enormia ei intulit, in retardationem executionis Teſtament. prad. & cum pacem noſtram.

F And if an Abbot and his Mouks break the Seal of any Writing which they have made to another perſon, the party ſhall have a Writ of Treſpaſs againſt them in ſuch form:

Rex &c. Si A. ſecerit &c. tunc pone Abbatem de C. et I. & D. Conventuales ejuſd. Abbatiæ, &c. quare, &c. quoddam Scriptum ipſius A. communi Sigill' prad. Domus ſignat', per quod idem Abbas et Conventus ejuſd. loci tenebant prad. A. in villis et veſtitu et omnibus neceſſariis ſuis ſibi inveniend', quouſq; idem Abbas et Conventus eandem A. alicui viro viginti librat as terræ vel redd. habenti maritavit' apud L. invener. malic' fregit', et alia &c.

G And alſo a man may have a Writ of Treſpaſs for fiſhing in his ſeveral Piſcary, and for cutting of his graſs and for plowing of his Land, or for ſhearing of his Sheep, and all in one Writ.

And another form of Writ for mowing of his Corn, and cutting of his Graſs and felling of his Woods, and eating of his Corn and Paſtures and all in one Writ.

And also another VVrit of Trespass made unto a VVoman H before Coverture, which is such :

Si A. & B. &c. fecerint, &c. tunc pone, &c. quare, &c. quaddam Forcerium ipsius B. apud N. invent. fregit, et quaddam Scrip. obligatorium in eodem Forcerio inventum cepit et asportavit, &c. et alia, &c. ad grave dampnum ipsius A. et B. et contra pacem nostram.

And another VVrit in the Register, *De Nevi abducta*, et I *cætell. asportat'*.

And another VVrit, *De Bladis et graminibus ulterius K asport'*, &c. And another VVrit, *De Bladis et grammibus boves suos asportat*, &c.

And another VVrit, *De Stagno fracto*, thus : *Quare*, &c. L *quaddam Stagnum apud R. malitiose fregit per quod aqua ad ten. Stagno decurrens Vivarium ipsius A. ibid. in tantum inundavit quod per cursum aquæ illius et inundation' prædi. pisces in vid. Vivar. tunc existens ad valenc' cent. mare' exivit, et alia*, &c.

By which it appeareth, that he shall have a VVrit of Trespass *vi et armis*, because he stoppeth the water to run out of his Pond, by which the Fish there go away.

And there is another VVrit *De Equis abductis*, and goods M and Chattels unto the value of 5 *l.* and 10 *s.* of his Money in Money told, *ibidem invent' cepit*, &c.

And there is another VVrit of Trespass against those who N lie near the Plaintiffs house, and will not suffer his Servants to go into the house, nor the Servants who are in the house to come out thereof; and for taking and impounding his Cattel, and not suffering him to have a Replevin, &c. And the form of the VVrit is such :

Rex, &c. *Si*, &c. *pone*, &c. *quare vi et armis Mansion. ipsius A. apud H. obsider' ita homines et servientes suos extra Mansion. prædictam existentes, eandem Mansionem ad servic. et commodum ipsius A. ubi fieri debuit. ingredi, nec quosd. alios homines et servient. suos intùs existentes, Mansion. prædictum ad terram ejusdem A. ibidem excolend' exire, non permisit', per quod terr. terre ipsius A. inculta remanser', et idem A. profic. terr. suæ prædictæ ad valentiam viginti librarum, et servic. suum eorundem hominum et servient. per magnum tempus amisit, nec non Averia ipsius A. ibidem imparcivit'. et ea ibidem imparcata detinuerint, non permittentes ea eidem A. secundum Legem et consuetudinem Regni nostri replegiari, et alia enormia ei intulerunt*, &c.

[88]

And there is another Writ of an House broke, and Prison A ner taken away thus :

Quare vi et armis domum ipsius A. apud N. in qua idem A.

quæd.

quend. H. de C. Scotum per ipſum in guer. capt', tanquam priſonar ſuum, quouſque ſibi de centum libris per quas idem H. redemptionem ſuam cum præfato A. pro vita ſua ſalvand. fuerat, ſatisfactum foret, detinuit, fregit', & ipſum H. ceper. & abduxit', & alia enormia, &c.

B And note that the form of the Writ for a live thing, as Horſes, or Men, or ſuch like is to ſay, *ceperunt & abduxerunt* and for a dead thing, to ſay, *ceperunt & aſportaverunt* &c. 2 & 3 P. & M. Dyer 121.

C And there is another Writ of Treſpaſs; If a man take another, and impriſon him until he make Oath that he will not trouble nor impriſon him for a Treſpaſs done to him before, or impriſon him until he hath made unto him a Releaſe of all Actions.

D And if a man taketh his Villain and puts him in the Stocks, and others come and break the Stocks, and let him out, he ſhall have an Action of Treſpaſs, and the Form is:

Quare cùm idem R. S. nativum et fugitivum ſuum, in Maneria ſua apud K. pro eo quòd idem R. non fuit juſtificabilis, capiſſet, et ipſum ibidem in cippis ad caſtigand', prout ſibi bene licuit, poſuiſſet, prædict', &c. prad. cippos vi et armis fregit', & ipſum S. ceper. & abduxit, &c.

E There is another Form of Writ, thus: *Quare vi et armis, &c. quadd. Foſſatum in L. terris et fimis in tantum implevit, quòd aqua de Foſſato prædict' eximi Bladi ipſius W. in gurbis in horreo ſuo ibidem exiſtent. ſuperundavit, per quod Bladi prad. ad valentiam C. s. putrefacta fuer', et Arbor. ſuas ibid. nuper creſcen. ad valentiam xl s. radicitus evulſer. et aſportaver', et Bladi ſua ibidem nuper creſcen. ad valenc. xl s. cum quibuſdam Averiis ſuis depaſti fuer', conculcaver. et conſumpſer', &c.*

And by the firſt of theſe Writs appeareth that that is an Action of Treſpaſs upon the Caſe, and the reſidue a common Action of Treſpaſs.

F And if a man draw Wine out of the Veſſels, and put Water in the ſame to fill them up again, he ſhall have an Action of Treſpaſs in this form:

Quare vi et armis, &c. xl. lagenas de quodam dolio Vini ipſius A. pretii quatuor libr', in navi prædicti I. apud S. poſit', abinde uſque S. ducend', extraxit, et dolium illud aquâ maritimâ adimplevit, ita quòd reſiduum Vini prad. putridum devenit, & vitalit. deperiit, & alia, &c.

G And another Writ of the Fiſh of his Piſcary, and Herb fed up, and Land digged thus:

Quare vi, &c. in libera Piſcar. ipſius A. apud N. piſcatus fuit, et Herbam ſuam ibid. nuper creſcen. falcavit, et in terra ſua ſimiliter ibid. fodit, et terram inde projeci', ac Herbam prædict. &

Piſcem de Piſcariis prædict. ad valentiam C s. *cepit*, &c.

And it appeareth here that there are divers manners of forms of Fiſhing in his Fiſh-pool. One Writ is, *Quare*, &c. *in Vivariis ſuis piſcatus fuit*, &c. Another Writ is, *Quare*, &c. *in ſepar. Piſcar. ipſius* A. *piſcatus fuit*, &c. And the third Writ is as before, *Quare in libera Piſcar. ipſius* A. *apud* N. *piſc. fuit*, &c.

And a man ſhall have a Writ of Treſpaſs for breaking of his Houſe, and cutting of his Trees, and for fiſhing in his Ponds, and for taking of his Goods and Chattels, and for taking of his Plough-Cattel, and impounding of them, and for taking of his Doves out of his Dovehouſe; and the form is ſuch:

Quare, &c. *Domos ipſius* A. *apud* N. *fregit, et Arbores ſuas ibid. nuper creſcen. ſuccidit, et in Vivariis ſuis ibid. piſcatus fuit, et Piſc. inde ac Arbores prædict', necnon alia bona et Catal. ſua, ad valentiam* C s. *ibidem inventa cepit et aſportavit, et Averia ſua de caruca ſua ibid. cepit et imparcavit, et ea tamdiu imparcata detinuit, quòd quadraginta acr. terræ ejuſd. A. per magnum tempus inculta remanſer', et Columbas columbar. ſui ibidem cum retibus et aliis ingeniis cepit et aſportavit, per quod idem* A. *volatum Columbar. ſu. prædict. totaliter amiſit, et alia*, &c.

C. 5. part 108. in Treſpaſs the Defendant as to one thing juſtified, and pleaded not guilty to another, and the Jury found one iſſue, and taxed damages entirely. 22. El. Dy. 369. 2 & 3 Ma. Dyer 121. 17. E. 3. *ac.*

And by this Writ it appeareth that a man ſhall have an Action of Treſpaſs for taking of his Plough-Cattel, and ſhall joyn the ſame in a common Action of Treſpaſs with other Treſpaſſes; and alſo that he ſhall have an Action for taking of his Doves, &c.

And a man may have a Writ *de Clauſo fracto, et Bladis in garbis et Fen. ad valenc.* C s. *depaſtis*, &c. Or of eating of his Hay only, &c. Or, *Quare Arundinem ipſius* R. *ad valenc.* C s. *apud* N. *nuper creſcen. meſſuit et aſportavit.*

Another, *Quare*, &c. *Lapidem molarem ipſius Prioris pretii* xl s. *apud* N. *fregit, et bona et catalla*, &c.

And by this it appeareth, that if it be a live thing or dead thing for which the Action is brought, it is not material whether he ſay *pretii*, &c. or *ad valentiam*, &c.

And another Writ of a Mill-Pool broken in two Towns, thus:

Quare, &c. *Stagum molendini ipſius* R. *de* B. *apud* R. *et* S. *fregit, per quòd aqua de eodem Stagno totaliter exivit, et idem* R. *proficuum molendini ſui præd. ad valenc.* C s. *amiſit; et bona et catalla ſua*, &c.

And another Writ, *De Domibus et catallis combuſtis.*

And another Writ, *De Ovibus tonſis et Lanis aſportatis.*

[89]. And another for taking him and impriſoning him in one place, and from thence carrying of him to priſon in another place, and there detaining him in Priſon.

And

A And another Writ for taking of his Sheep in one place, and impounding of them in another place, until he hath paid a Fine.

B And another Writ for breaking of his Sluces, in ſuch manner:

Quare, &c. Excluſum ſtagni molendin. ipſius Abbatis et Parcum ſuum ibid. apud S. fregit', et in eo ſine licentia, &c. et Arbor. ſuas, &c. et in ſeparali Piſcaria, &c. et Piſcem indè, & Arbor. præd. ad valenc. C s. nuciem Feras de præd. parco ceper.

C Another Writ, *Quare vi et armis, &c. Excluſ. ipſius A. ultr. foſſatam de N. pro ſalvatione terrarum ſuarum apud C, &c. vi et armis fregit, et maremium ind. ad valenc. C s. in minutas partes ſcuit, ità quòd per fracturam hujuſmodi, terræ et prata ejuſd. A. ibidem inundat. fuer', et id. A. proficuum terrarum et paturum præd. ad valenc. C s. totalit' amiſit, et alia, &c.*

D And another Writ: If a man doth impriſon his Villain, and ſet him in the Stocks for ſome offence, and another man doth ſet him at large, the Lord ſhall have an Action of Treſpaſs for breaking up the Stocks, and for ſetting his Villain at large.

E And another Writ: If a man be riding on the way, and another man ſtriketh his Horſe, by which the Rider falleth and is hurt; he which is caſt off his Horſe ſhall have Treſpaſs againſt the other. See 91. k.

F And another Writ for putting out another mans Eye thus: *Quare vi et armis dextr. ocul. ipſius W. apud N. ruit, & alia, &c.*

G And the Maſter of an Hoſpital ſhall have an Action of Treſpaſs for taking of Goods in the time of his Predeceſſor. And the form of the Writ is ſuch: *Rex, &c. Si W. de N. Cuſtos Hoſpitalis ſancti* Michael *de C. fecerit, &c. tunc pone, &c. quare vi et armis bona et catall. prædict' Hoſpitalis, ad val. C s. tempore I. de C. nuper Cuſtodis Hoſpital. præd' prædeceſſoris prædict. Cuſtod', apud R. inventa cepit et aſportavit. &c. et alia, &c.*

And the like Writ for an Abbot or Prior, and in the end of the Writ he ſhall ſay, *in deteriuration. Domûs et Eccleſiæ ipſius Abbatis*: and ſo it ſeemeth it ſhall be in the end of the Writ for an Hoſpital.

H And another Writ for an Abbot thus: *Quare vi et armis portas et domos Dom. et Eccleſ. ipſius Abbat. apud I. fregit, et Blada Dom. et Eccleſ. præd. tempore præd. Abbatis ibidem creſcent', ad val', &c. cum quibuſd. Averiis depaſtus fuit, conculcavit et conſumpſit, et bona et catalla earund. Domûs et Eccleſiæ tempore prædict. ad val. C s. ibidem inventa cepit, &c. et alia, &c.*

And another Writ for a Treſpaſs done in the time of Vacation of an Abby or Hoſpital; *Quare vi & armis bona et catall. Dom'ns et Eccleſiæ ipſius Abbatis de C. tempore Vacationis Abbat. prædict' ad val. C s. apud L. invenita cepit & aſportavit, &c. & alia, &c. in deteriorationem, &c. & cont. pacem, &c.* I

And another Writ of Treſpaſs; *Quare vi & armis Warrennam ipſius A. apud C. intravit, & in ea, &c. fugavit, & Boſcum ſuum ſimilit. ibidem intravit, et tres pullos ſuos Eſperverum in eod. boſco nuper nidific. pretii xx s. ac alia bona et catall. ſua ad val. C s. ibidem inventa, necnon lepores, cuniculos & perdices in Warrenna cepit, &c.* K

And another Writ of Treſpaſs; *Quare vi & armis centum Oves ipſius A. apud T. invent' cum quibuſd. canibus fugavit, canes illos ad mordend. Oves præd. in eandem incitando, quâ per fugationem illam et morſus eandem præd' Oves præd. multipliciter deteriorat' fuer'; et magna pars Ovium ill. fœtus abortivos fec'; et in T. ſerviens ſuum ibidem inſult. fecit, &c. per quod, &c.* L

And another Writ, *De Porcis fugatis, ità quòd interierunt, &c.*

And if a man do incite or procure his Dog to bite any man, he ſhall have an Action of Treſpaſs for the ſame.

And if a man fill a ditch with mud and earth, which had uſed to be a Water-courſe, for which another man's Land is drowned, &c. he ſhall have a Writ of Treſpaſs, *Quare vi et armis*, and the Writ is ſuch: *Quare vi et armis quoddam foſſatum apud T. per quod quædam aqua decurrit ib', terrâ et fimo in tantum implevit, quòd aqua illa de antiquo curſu ſuo impedita xx. acras terræ ipſius A. ibidem diverſis Bladis ſeminatas inundavit, per quod idem A. proficuum terræ ſuæ præd' totaliter amiſit; et alia enormia, &c.* M

And if a man diſtrain Cattel, and drive them into unknown places, the party ſhall have an Action of Treſpaſs *Quare vi et armis*, for the diſtraining of them; and the Writ is ſuch: N

Quare vi et armis Averia ipſius A. apud N. cepit, et ea ad loca ignota fugavit, ità quòd Averia ill. eidem A. ſecundum Legem et conſuet' Regni noſtri replegiranda invenire non potuer'; et alia, &c.

There are divers Writs of Treſpaſs founded upon Statutes, whereof ſome do follow. O

Rex, &c. Si A, &c. tunc attach. B, &c. quòd ſit coram nobis, &c. ad reſpond. præf. A. quare vi et armis C. uxor' præf. A. apud N. rapuit, et eam cum bon. et catall. præd' A. ad val' C. marcarum, abduxit, et eam adhuc ei detinet; et alia, &c. ad grave damnum, &c. et contra formam Stat. in hujuſmodi caſu proviſ., &c. Teſte, &c.

Another

P Another Writ: *Quare vi & arm. Averia ipſius A. apud N. in Com. ſua cepit, et ea à Com. illo uſque F. in Com. Kanc. fugavit et imparcavit, et ea ibidem imparcata detinet, cont. Legem et conſuet. Regni noſtri & cont. pacem noſtram. Et habeas ibi,* &c.

A Another Writ of Treſpaſs, that Diſtreſſes, &c. be not out of the Fee, or in the King's Way thus: *Si A. fecerit, &c. tunc* [90]. *pone, &c. quòd ſit, &c. coram,* &c. *oſtenſ. quare cùm de communi Concil. regni noſtr' proviſum ſit, quòd non liceat alicui Diſtrictiones facere in quacunque cauſa extra Feod. ſuum, nec in via Regia aut communi ſtrata, niſi de nobis & miniſtris noſtris ſpecialem auctoritatem ad hoc habentibus, præd' B. qui miniſt. nō miſter non eſt, ut dicitur, extra Feod. ſuum apud N. Averia ipſius A. contr. form. proviſionis præd',* &c. *Et habeas,* &c. Otherwiſe in the High way thus: *Averia ſeu bona et catalla ipſius A. in Regia via cepit, et imparcavit, & ea adhuc imparcata detinet, contra Legem et conſ. Regni noſtri, &c. et cont. pac' noſtram*: Or thus; *Et Averia præd' diu imparcata detinuit contra Legem,* &c. *et contr. pacem noſtr',* &c. *Et habeas,* &c. *Et Averia illa eid. A. interim deliberari fac', Teſte,* &c.

B Another Writ of Treſpaſs againſt him who diſtraineth a man by his plough-Cattel, or by his Sheep: *Oſtenſ. quare cùm ad communem utilitat. Regni noſtri ſtat. ſit, quòd nullus de eodem Regn' diſtringat' per Averia carucar. ſuarum, vel per Oves, pro debito noſtro vel alieno ſeu alia quacunq; occaſione, per Ball. ſeu miniſt. noſtros aut alior', quamdiu alia habeat Averia per quæ rationabilis Diſtrictio ſuper ipſum fieri poſſit pro debitis illis levand', exceptis duntaxat Averiis illis quæ in damno alicujus inventa ſecundum Legem & conſ. Regni noſtri imparcari contigerit; præd' W. Oves præd' A. apud N. vel Averia ipſius A. de caruca ſua apud N. cont. form' Stat' prædict. cepit et imparcavit, et ea adhuc ibidem imparcata detinet, cont. Legem & conſ.* &c. *at cont. pacem,* &c. *Et habeas,* &c. *et Averia illa eidem A. interim deliberari fac'. Teſte,* &c.

And ſo note that in this Writ of Treſpaſs the Sheriff ſhall make deliverance unto the party, as he ſhall do upon a Replevin: And if the party hath the Beaſts delivered unto him before the Writ ſued, then this clauſe, *Averia illa eidem A. interim deliberari facias*, ſhall not be in the Writ.

C Another Writ: If a man doth take the Oxen or Carts of another, or other things, as Barges or Ships, to carry goods, againſt the will of the owner, then he ſhall have ſuch Writ: *Rex Vic',* &c. *Si,* &c. *pone,* &c. *oſtenſ. quare cùm in Stat. dudum apud* Weſtm. *edit. int. alia contineatur, quòd nullus capiat equos, boves, plauſtra, carettas, naves, et batellas ad cariagium fac', contra vol. ſntat. illius cujus res ill' fuer'; præd. B. et D. vi et armis*

quandam carectam et quatuor equos prad. A. apud N. invent', contra voluntatem ipſius A. ad cariagium fac' ceper', et per magnum tempus detinuer'; et alia enormia, &c. ad grave dampnum, &c. et contra formam Statuti predict', et contra pacem noſtram. Et habeas ibi, &c.

Executors ſhall have ſuch Writ of Treſpaſs for goods and chattels taken in the life of the Teſtator. D

And if a man do diſtrain out of his Fee, he who is diſtrained ſhall have an Action of Treſpaſs againſt him; and in the end of the Writ there ſhall be this clauſe, *et Averia illa eidem A. interim deliberari faciat, &c.* And by that Writ the Sheriff ſhall deliver the Cattel to the party, as in a Replevin. E F

If a man caſt any thing upon the feet of another, by which he is hurt, he ſhall have an Action of Treſpaſs for the ſame.

If a man take a Canon or Monk out of the Monaſtery, the Abbot or Prior ſhall have an Action of Treſpaſs thereupon, thus: G

Oſtenſ. quare quand. domum infra Priorat. de B. quæ eſt Cella ejuſdem Abbatis, in quo Frater I. Canonic. juſdem Abbatis, pro delicto in quod contra Regulam Ordinis ſui incidit, exiſtit, juxta dicti Ordinis regulam caſtigand', vi et armis fregit, et præſ. I. cepit et abduxit; et alia, &c. Or thus; *Quare, &c. Clauſum ipſius Abbatis apud L. fregit, et fratrem W. de L. Canonicum, &c. in Carcerali cuſtodia infra clauſum predict. juxta Regul. Ordinis ſui caſtigand. detentum, ab eadem cuſtod. extraxer. et abduxer'; et alia, &c.*

And a man ſhall have an Action of Treſpaſs for taking his Son and Heir, or his Daughter and Heir, and marrying her. And the Writ is ſuch: H

22 H. 4. 16. *Si R. fecerit, &c. tunc pone, &c. W. et B. quòd ſint, &c. Quare vi, &c. Johann', vel Johan', as the caſe is. filium vel filiam et hæred. præd' R. apud Linvent. capuer', maritaverunt et abduxerunt; et alia, &c.*

And the King ſhall have an Action of Treſpaſs for taking of his goods. And the Writ is ſuch: I

Quare vi et armis bona, et catalla noſtra ad val', &c. et alia enormia ibidem perpetravit, in noſtri contempt', et grave dampn', &c. et contra pacem noſtram.

And for ſuch Treſpaſs done upon the ſoil and poſſeſſion of the King, the uſe is for to have an Information of Intruſion for the King in the Exchequer, and the Def. there to anſwer it. And when he appeareth in the Exchequer, the courſe is there to bind him in Recognizance at his peril to leave the poſſeſſion to the King: and yet it ſeemeth the King may have an Action of Treſpaſs, *Quare Clauſum fregit,*

&c.

&c. et Herbat depaſt. fuit, &c. et Arbores ſuccidit, &c.

K And there are other Writs of Treſpaſs, *Quare Foſſata et Sepes ipſius A. fregerunt, &c.*

And another Writ for digging in his Land, and for putting of Lime and Hemp in the Ditches, by which the Water is corrupted; and the Writ is:

Quare &c. in ſeperali ſolo ipſius A. apud N fodit, et terram inde projectam in Foſſatis ſuis ibidem projecit, et linum et canabum in eiſd. foſſat. poſuit, per quod aqua in foſſ. exiſtens per corruption. lini et canabi præd' adeo infecta devenit, quòd Piſces in eiſd. foſſat. exiſtens ad val' &c. interiit; et al' &c. [91]

A And another Writ of Treſpaſs for aſſaulting a man in his houſe, and lying in wait for him, until he make Oath that he will not bring any Action againſt him, &c. and the Writ is ſuch:

Quare in ipſum I. &c. et ipſum Lin quandam dom', ad quam pro vita ſua ſalvanda ib. fugit, inſecuti fuer', et ipſum inibi per tempus non modicum obſeder', et ipſum ſic obſeſſum quousq; capere. præſtit. ſacrament. quòd aliquam Action. verſus præf. &c. occaſione tranſgr. præd. ſeu aliâ occaſione quacunq; non moverit, detinuer', &c.

B And if a man have Waif and Stray within his Manner by Preſcription, and another man taketh the Waif or Stray out of the Manner, &c. he who hath the manner ſhall have an Action of Treſpaſs for them, &c. and that without any ſeiſure of them before. 40 E. 3. 10.

C And if a man take another man and impriſon him, and compel him to make to him a Statute-Merchant, or a Releaſe, or an Acquittance, he ſhall have an Action of Treſpaſs for the ſame, and the Writ ſhall recite the matter, and the detaining in Priſon of him, *quouſque, &c.*

D If a man have Wreck by Preſcription, or by the King's Grant, &c. if Goods be wrecked upon his Lands, and another take them away, he who hath the Wreck ſhall have an Action of Treſpaſs *Quare vi et armis*, for thus taking without ſeiſure thereof before; and the Writ is ſuch:

Oſtenſur' quare cùm idem Th. Dom. Manerii de Eſton Bavent *exiſtat, et ib. habere debeat, ipſeq; et anteceſſores ſui Dom. Manerii præd. à tempore quo non extat memoria hucuſq; habere conſuever', Wreccum maris infra præcinct. Manerii præd'; præd* Joceus *et* Robert. *bona et catalla ad valenc. C s. apud S. infra præcinct. ejuſd. Manr. ad terr. projecta, quæ ad ipſum* Th. *tanquam Wrecc. pertin. deberent, vi et armis ceper. et aſportaver', &c. Or* thus, *decem libr. in pecuniâ, &c. Or, quare cùm per Charjam, &c. habere debeat, &c.*

If

If a man ſend his Servant to apprehend his Villain, and to bring him unto him, and the Servant apprehendeth the Villain, and in bringing him unto his Maſter another reſcueth him from the Servant, and lets him go at large; the Maſter ſhall have an Action of Treſpaſs for this Reſcous, and not the Servant, for the wrong is done unto the Maſter, &c.

If an Abbot or other man hath a Hundred, and hath all Felons Goods within the Hundred, if any Felon within the Hundred be attainted, and the Sheriff taketh the Goods of the Felon within the Hundred, he who hath the Hundred, and ſuch liberty, ſhall have an Action of Treſpaſs againſt the Sheriff for the Goods which the Sheriff took, and the ſame ſhall be: *Quare vi & armis*, &c.

And if an Abbot or other perſon ought to have Toll in any place, and ſendeth his Servant to take the Toll, and another doth diſturb his Servant to take the Toll; the Abbot, or he who ought to have the Toll, ſhall have a general Action of Treſpaſs, *Quare vi & armis* they did aſſault his Servant, and diſturbed him to take the Toll. And the Writ is ſuch:

Quare cùm idem Abbas, per Chart. progenitò' noſtr' præ' quondam regum Angl', habere debeat Theolonium de rebus venalib. ad Villam de S. venient ib', idem R. & T. in S. ſervient. ipſius Abbatis per ipſum ad hujuſm' Theolonium in Villa præd. colligend. deputat', vi & arm. inſultum fecer', et ipſum quò minùs hujuſm. Theolonium colligere & percipere potuit impediver', et præd. catal. per ipſum S. pro hujuſm. Theolonio nomine Diſtrictionis ibid. capta et attachiata eidem S. abſtuler', per quod idem Abbas profic. de hujuſm. Theolonio proveniens per magnum tempus amiſit; & alia &c.

And ſo if a man ought to have Toll in a Fair, &c. and his Servants are diſturbed to gather the ſame, he ſhall have the like Action for aſſault of his Servants, and for the loſs of their Service, and for the diſturbance made unto them, and for loſing the profit of his Toll, and all in one Writ.

Vid. 1. H. 5. 1. 47 E. 3. 22.

And if a man have a Fold in common with two other men, and the one do diſturb him to ſet up his Clays and Pales, and break them, he ſhall have an Action of Treſpaſs againſt them in this form, *Quare vi & armis*, thus:

Si Prioriſſa de T. fecerit, &c. tunc pone, &c. E. &c. oſtenſ. quòd cùm ea' Prioriſſa quandam Faldam apud F. ſimul cum præd. E. ac M. de B. habere debeat, ipſáq; Prioriſſa & ejus prædeceſſ. hujuſm. Faldam cum præf. E. et M. & eor' anteceſſ. à tempore cujus non extat memoria, ſemper hucuſque habere conſuever', præd. E. claias et palos ipſius Prioriſſæ in Falda eorund' Prioriſſæ, E.

&

et M. apud dictam Villam de F. nuper erect. poſitos, vi et arm' fregit, et ipſam Prioriſſam quò minùs clauſum et palos in Falda præd' prout ad ipſam pertinuit, ponere, vel aliquod commodum de Falda illa percipere potuit, impedivit; et alia, &c.

I A man ſhall have an Action of Treſpaſs for taking of his Apprentice, or for taking of his Servant.

K And the Churchwardens ſhall have an Action of Treſpaſs for taking the Goods of the Church, either in their own time, or in the time of their Predeceſſors.

L And a man may have an Action of Treſpaſs for breaking of his Houſe or Cloſe, and alledge a continuance of the Treſpaſs, and of the breaking thereof, from ſuch a day unto ſuch a day; as well as he may have for treading of his Graſs or cutting of his Corn, &c.

M The Ordinary ſhall have an Action of Treſpaſs for thoſe Goods which he hath to adminiſter as Ordinary; where a man dieth Inteſtate, and the Goods are taken out of his poſſeſſion, he ſhall have an Action of Treſpaſs for the taking thereof. But he ſhall not have an Action of Treſpaſs for Goods taken out of the poſſeſſion of him that died Inteſtate, but the Adminiſtrators ſhall have ſuch Action; for the Ordinary ſhall not have an Action for Goods or Debts of him that died inteſtate, but only an Action of Treſpaſs for the Goods taken out of his own poſſeſſion. And the Proceſs in this Writ of Treſpaſs is Attachment and *Diſtringas*; and if the Sheriff do at the Attachment or *Diſtringas* return *Nihil*, then he ſhall have a *Capias*, and *Alias*, and *Pluries*, and Exigent, and ſo Proceſs of Utlagury againſt him. [92]

A If the King granteth a Protection unto a man, by which Protection he taketh him, his Lands and Goods into his Protection, as the common courſe and form of Protections are; now if another man do afterwards take his Goods, or doth enter into any of his Lands or Tenements during the time that the Protection is in force, he ſhall have a ſpecial Action of Treſpaſs againſt him in this form:

Oſtenſ. quare cùm nuper ſuſceperimus in protect' et defenſion' noſtram W. homines, terras, res, et eddit', et omnes poſſeſſiones ſuas, omnib' et ſingulis inhibent' nè quis injuriam, moleſtiam, damnum inferret ſiu gravamen; id. B. bona et catal. præd. W. dum ſub protect. noſtra fuit, apud. N. invent', ad valent. cent. librar', vi et arm' cepit et aſportavit, et in homines, &c. per quod, &c. et alia, &c. ad grave dampnum ipſius W. et cont. pacem noſtr. Et habeas ibi nomina Plegg', et hoc Breve. Teſte, &c.

B And alſo he who hath the King's Protection, if any man take his Goods, or enter into his Lands, &c. or beat his Servants,

vants &c. he ſhall have a ſpecial Writ unto the Sheriff for to enquire of them, and to certifie the ſame before the King, &c. and it ſeemeth the King ſhall make Proceſs againſt them by *Venire facias*, as upon an Indictment, and that thereupon they ſhall be fined, and the Writ is ſuch:

Rex Vic. Linc. *ſalut'. Præcipim. tibi, quòd per ſacrament.* C *probor. & legal. homin. de Com. tuo per quos, &c. diligent. inquiras, qui malefactor. et pacis noſtr. perturbator bona & catal.* A. *ad valentiam cent. librar', apud* N. *inventa quem ſuſcepim. in defenſion. noſtr' ſpecial', homines, res, redditus & omnes poſſ. ſuas, omnib' & ſingul. inhibentes, nè quis eis injuriam, moleſtiam, damnum inferret ſeu gravamen, vi & arm. ceper. et aſportaver', & in homines ſuos ibid. exiſtentes, inſultum fecer', & ipſos verberaverunt, &c. et alia, &c. ad grave damnum ipſius* A. *et contra protect. noſtram præd', & contra pacem noſtram: Et Inquiſitiones indè diſtinct. & apertè factam nobis ſub ſigillo tuo et ſigillis eor. per quos facta fuerit, ſine dilatione mittas, & hoc Breve.*

But note that there is a Statute made *An.* 28 *E.* 3. *cap.* 6. that willeth, that no Commiſſion or Writ ſhall be from thenceforth granted unto the Sheriff, to enquire, &c. But if ſuch VVrit or Commiſſion be granted, &c. *Quare* if it be good: it ſeemeth not, for this Statute is made only to bind the King that he ſhall not grant, &c.

There is another Writ *De Fœnis in Prato proſtrat. et depaſt.*; D and another Writ *De Clauſo Oſtio, & Feneſtris fractis*, &c.

Writ de Treſpaſs ſur le Caſe.

THere is another form of Writ of Treſpaſs upon the Caſe E which is to be ſued in the Common Pleas or King's Bench; an in that Writ he ſhall not ſay *Vi & armis*, &c. but in the end of the Writ he ſhall ſay *contra pacem*, and the form is ſuch:

Rex Vic', &c. *Si* Matilda *de* D, &c. *tunc pone*, &c. *quòd ſit*, &c. *ad reſpond. eam nobis quàm* Matildæ, *quare cùm ead.* Matilda *nuper quoddam Breve noſtrum de Prohibitione verſus præf.* L. *nè ipſe Placitum in Cur. Chriſtianitatis de catallis & debitis quæ non de Teſtamento vel Matrimonio ſequeretur, in Cur. noſtra impetraſſet, eadémque* Matilda *dictum Breve noſtrum præf.* L. *apud* C. *liberaſſet; idem* L. *recepto dicto Brevi noſtro, illud ibid. in luto projecit, et pedibus ſuis conculcavit, necnon Placitum præd' ſequutus eſt in ead. Curia Chriſtianitatis, in noſtri contempt', & ipſius* Matildæ *grave damnum, ac contra pacem noſtram. Et habeas*, &c.

Note well this Writ, that it lieth for caſting a Writ into the dirt. *Crompton* 333. *ac.*

Another

F Another Writ, *Quare in aqua de* Plim', *per quam inter* Humber & Gaunt *navium et batellorum communis eſt tranſitus, ac tranſvorſe aquæ pilis defixit, per quod quædam navis cum triginta quarteris braſii ipſius W. ſubmerſa fuit, et viginti quarteria braſii* C s. *deperier', et alia enormia*, &c.

G And if the Leſſor do ouſt the Executors of the Leſſee of their Term, they ſhall have a ſpecial Action of the Caſe againſt the Leſſor; and the Writ ſhall be by Summons, &c. and not by *Pone per vadios et ſalvos plegios*, as the other VVrit of Treſpaſs is; and the form is ſuch:

Si Johan', *Executrix Teſtam.* E. *de* C. *fecerit te*, &c. *tunc ſum'*, &c. P. & M. *aſſenſ.* &c. *quare cum iidem* P. & M. *unum molendinum & ſex acras terræ cum pertin. in* N. *præf.* E. *de* C. *ad terminum qui nondum præteriit dimiſiſſent, et idem* E. *de* C. *in Teſtamento ſuo præd. molendinum et terr', uſque ad finem termini præd' præd. Executrici, ad executionem Teſtam. præd. inde faciend', legaſſet; præd.* P. *et* M. *poſt mortem ipſius* E. *de* C. *præd. molend. et terras (durante termino præd') ingreſſi, ea præd' Executrici detinent minùs juſtè, in retardation. execut. Teſtam. prædict', ut dic'. Et habeat*, &c.

And if the Sheriff doth arreſt a man upon a *Capias* directed unto him ſued forth upon a Statute-Merchant, and afterwards ſet him at liberty, he who ſued the VVrit ſhall [93] have a ſpecial Action upon the Caſe againſt the Sheriff, which is ſuch:

A *Rex Coronatoribus ſalut'. Si* A. *fecerit*, &c. *tunc pon'*, &c. *Vic. noſtrum* Suff. *quòd ſit*, &c. *oſtenſ. quare* R. *mercatorem, nuper per Breve noſtr. eid. Vic. direct', prætextu cujuſd. Recognitionis centum marcarum eid.* A. *per præf.* R. *juxta form. Statuti apud* Acton Burnel *nuper editi fact', capt. & in cuſtod. ejuſd. Vic. apud* O. *exiſtent' præf', A. de præd. centum marcis minimè ſatisfacto, contra voluntatem ipſius* A. *liberè abire permiſit, ad grave damnum ipſius* A. *et in retardation. execution. Recognitionis prædict', ut dicitur. Et habeatis*, &c.

B And if the Sheriff in a Writ of Account or Debt return upon any, *quòd non eſt inventus, nec habet terras*, &c. *per qu. diſtringi poterit*, &c. for which a *Capias* is awarded againſt him, and he is arreſted thereupon, where he hath ſufficient Lands, or Goods and Chattels; then he ſhall have an Action upon the Caſe againſt the Sheriff, directed unto the Coroners, as before is ſaid, &c. 14 H. 7. 10.

C And ſo another Writ; If the Sheriff hath a Priſoner committed unto him for Debt, &c. and afterwards he ſuffer him to go at liberty before the Debt be ſatisfied, &c. he ſhall have an Action upon the Caſe againſt the Sheriff; and 22 E. 4. 1. & 2. 34 H. 6. 6. 21 H. 7. 30. 36 H. 6. 1.

yet

yet it ſeems he may have an Action of Debt againſt the Sheriff.

If a man be indicted of Felony before any Juſtice, and D one *T.* as one of the four men of the Town, and *Rescu*, give the Evidence as Indictors, &c. and afterwards he who is indicted is acquitted, &c. and afterwards the Baily of the Hundred or other Officer ſheweth unto *T.* that he who is acquitted hath a Writ of Conſpiracy againſt him, and that he hath a *Capias* to arreſt him, by which he is arreſted and impriſoned until he pay ſix marks for a Fine for his deliverance, &c. he ſhall have an Action of Treſpaſs upon his Caſe: But it ſeemeth he may have a general Action of Treſpaſs in that caſe upon Falſe impriſonment, if he have not any Writ directed unto him.

If a Replevin be removed out of the Liberty by *Pone* in- E to the Common Pleas, and afterwards (pendant the Plea there) the Baily of the liberty doth award a Return in the Liberty to the Defendant, for which he taketh the Cattel and impoundeth them, by means whereof ſome of them die for want of Food; the party grieved ſhall have an Action upon the Caſe againſt the Baily of the Liberty, who awarded that Return to hold Plea after the matter removed in the Common Pleas.

If a man doth attach another or his Goods for Debt, &c. F in a Liberty, and after the Baily, by Covin betwixt him and the Defendant to diſcontinue the Plaint, deliver the Goods attached to the Defendant, the Plaintiff ſhall have an Action upon the Caſe againſt the Baily, and the Writ is ſuch:

Si A. fecerit, &c. tunc ſum' I. Ballivum magnæ Cur. ſive Mercati de N. quòd ſit, &c. oſtenſ. quare cùm idem Ball. ad Querimoniam præd. A. B. per quædam catalla ſua, ad reſpondend' præf. A. in Cur. prædict' ſecundum Legem mercatoriam, prout moris eſt in regno noſtro Angl', de debito decem librarum, quod idem A. de præf. B. exigit, attachiaſſet, ac in Loquela prædict' in eadem Cur. inter partes prædict', quòd ſe in Inquiſitionem inde poſuer', in tantum proceſſum fuiſſet, prædict' Ballivus pendente coram eo Inquiſitione prædict', per Colluſ. inter ipſum & præfatum B. habitam in Cur. prædict', malitioſè receſſit, & Inquiſitionem prædict. capere recuſavit, per quod Placitum præd. extitit diſcontinuat'; idèmque Ballivus & catalla prædict. eidem B. præf. A. de debito præd. non ſatisfact', poſtmodum liberavit, ad damnum ipſius A. viginti librarum, ut dicitur, &c.

And a man ſhall have an Action of Treſpaſs upon the G Caſe againſt his Neighbour who hath Lands betwixt him and the Sea, and ought to make Banks; and cleanſe certain Ditches

Ditches and Sewers betwixt him and the Sea, and he doth not diſtraſe them as he ought to do, by reaſon whereof his Land is ſurrounded, &c. he ſhall have his Action upon the Caſe againſt him for not mending the Banks, and cleanſing the Ditches and Sewers, &c.

H If a man be committed unto the Goal for Debt or arrearages of Accounts, and the Gaoler of malice lay ſo many Irons upon him, or ſet him in the Stocks, or keepeth his Victuals from him, by reaſon whereof he is ſo ſpent, that he becomes lame, or hath other infirmity; he ſhall have an Action upon the Caſe againſt the Gaoler.

If a man doth diſtrain any Priors, or other Prelates Horſe, whereupon he is riding in his journey, for or upon any Contract, Debt, or Treſpaſs done by him or his Predeceſſor, when he might have diſtrained or attached him by other Goods or Chattels of the ſaid Prior or Prelate, then he ſhall have an Action upon the Caſe, which is ſuch: Vid. Br. Attachment 23. but if he hath not other Goods then he may attach theſe Goods.

I *Si A. Prior &c. pone B. &c. oſtenſ. quare cùm non liceat aliquæ Prælatum, Magnatem, ſeu aliquam perſonam Eccleſiaſtic' regni noſtri, per idem Regnum alicubi tranſeuntem, occaſione alicujus Contractûs ſui debiti per equitaturam ſuam propriam diſtringere, cùm alia Averia ſua catalla ibidem habeat, per quæ rationabilis Diſtrictio ſuper ipſum fieri ſoliat; prad. B. præf. Priorem per Villam de C. tranſeunt' occaſione cujuſdam Contractûs inter S. quondam Priorem &c. &c. Prædeceſſorem prad. Prioris, et prad. B. ibidem, ut dicitur, per quendam Equum palfridum ſuum, quemquem per alia Averia et catalla ſua ibid. rationabilem Diſtrictionem ſuper ipſum fier. potuiſſet, diſtrinxit, et palfridum illum diu malitioſè detinuit, per quod negotia ſua urgentia, pro quibus tranſitum ſuum prad. fecerat, perierunt, et alia, &c.* [94]

A And if a man promiſe and take upon him to make for another man certain Carts for Carriages, or other thing, and taketh money before-hand for to do the ſame, and afterwards he doth not make them according to the promiſe and undertaking; the other may have an Action upon the Caſe againſt him, and the Writ ſhall be ſuch:

Si W. &c. tunc pon. I. &c. oſtenſ. quare cùm idem I. tranſmarinas pro villatibus ſuis ibidem ipſius W. ad partes tranſmarinas ducend. pro certa pecuniæ ſummâ, cujus unam part. præmanibus recepit, infra certum terminum inter eos concord. facere et fabricare apud S. aſſumpſiſſet: idem I. carrus prad. infra terminum prad. facere et fabricare non curavit, per quod idem W. diverſa bona et catalla ſua ad valenciam C. marc. quæ in carribus prad. duci

yet it seems he may have an Action of Debt against the Sheriff.

If a man be indicted of Felony before any Justice, and one *T.* as one of the four men of the Town, and *Rectus* give the Evidence as Indictors, &c. and afterwards he who is indicted is acquitted, &c. and afterwards the Bailiy of the Hundred or other Officer sheweth unto *T.* that he who is acquitted hath a Writ of Conspiracy against him, and that he hath a *Capias* to arrest him, by which he is arrested and imprisoned until he pay six marks for a Fine for his deliverance, &c. he shall have an Action of Trespass upon his Case: But it seemeth he may have a general Action of Trespass in that case upon False imprisonment, if he have not any Writ directed unto him. D

If a Replevin be removed out of the Liberty by *Pone* into the Common Pleas, and afterwards (pendant the Plea there) the Baily of the liberty doth award a Return in the Liberty to the Defendant, for which he taketh the Cattel and impoundeth them, by means whereof some of them die for want of Food; the party grieved shall have an Action upon the Case against the Baily of the Liberty, who awarded that Return to hold Plea after the matter removed in the Common Pleas. E

If a man doth attach another or his Goods for Debt, &c. in a Liberty, and after the Baily, by Covin betwixt him and the Defendant to discontinue the Plaint, deliver the Goods attached to the Defendant, the Plaintiff shall have an Action upon the Case against the Baily, and the Writ is such: F

Si A. fecerit, &c. tunc sum' I. Ballivum magnæ Curiæ vos Mercati de N. quòd sit, &c. ostens'. quare cùm idem Ball. ad Querimoniam præd. A. B. per quædam catalla sua, ad respondend' præf. A. in Cur. prædict' secundum Legem mercatoriam, prout moris est in regno nostro Angl', de debito decem librarum, quod idem A. de præf. B. exigit, attachiasset, ac in Loquela prædict' in eadem Cur. inter partes prædict', quòd se in Inquisitionem inde poneret', in tantum processum fuisset, prædict' Ballivus pendente coram eo Inquisitione prædict', per Collus. inter ipsum & præfatum B. habitam in Cur. prædict', malitiosè recessit, & Inquisitionem prædict. capere recusavit, per quod Placitum præd. extitit discontinuat'; idemque Ballivus catalla prædict. eidem B. præf. A. de debito prad. non satisfact', postmodum liberavit, ad dampnum ipsius A. viginti librarum, ut dicitur, &c.

And a man shall have an Action of Trespass upon the Case against his Neighbour who hath Lands betwixt him and the Sea, and ought to make Banks; and cleanse certain G

Ditches

Ditches and Sewers betwixt him and the Sea, and he doth not diſtrain them as he ought to do, by reaſon whereof his Land is ſurrounded, &c. he ſhall have his Action upon the Caſe againſt him for not mending the Banks, and cleanſing the Ditches and Sewers, &c.

H If a man be committed unto the Goal for Debt or arreuerages of Accounts, and the Gaoler of malice lay ſo many Irons upon him, or for him in the Stocks, or keepeth his Victuals from him, by reaſon whereof he is ſo poor, that he becomes lame, or hath other infirmity; he ſhall have an Action upon the Caſe againſt the Gaoler.

If a man doth diſtrain any Priors, or other Prelates Horſe, whereupon he is riding in his journey, for or upon any Contract, Debt, or Treſpaſs done by him or his Predeceſſor, whom he thinks have diſtrained or attached him by other Goods or Chattels of the ſaid Prior or Prelate, then he ſhall have an Action upon the Caſe, which is ſuch: Vid. Br. Attachment 23. but if he hath not other Goods, then he may attach theſe Goods.

I *Si A. Prior &c. ponit B. &c. oſtenſ. quare cùm non liceat alicui Prælatorum, Magnatum, ſeu aliquam perſonam Eccleſiaſtic' regni noſtri, per idem Regnum alicubi tranſeuntem, occaſione alicujus Contractûs ſui debita per equitatem ſuam propriam diſtringere, cùm alia Averia ſiva catalla ibidem habeat per quæ rationabilis Diſtrictio ſuper ipſum fieri poſſet, prædict. Priorem per Villam de C. tranſeunt' occaſione cujuſdam Contractûs inter S. quondam Priorem &c. &c. Prædeceſſorem prædict. Prioris, et prædict. B. ibidem, ut dicitur, per quendam Equum palfridum ſuum, quemquem per alia Averia et catalla ſua ibid. rationabilem Diſtrictionem ſuper ipſum fec. poteriſſet, diſtrinxit, et palfridum illum diu malitioſè detinuit, per quod negotia ſua urgentia, pro quibus tranſitum ſuum prædict. fecerat, perierunt, et alia, &c.* [94]

A And if a man promiſe and take upon him to make for another man certain Carts for Carriages, or other thing, and taketh money before-hand for to do the ſame, and afterwards he doth not make them according to the promiſe and undertaking; the other may have an Action upon the Caſe againſt him, and the Writ ſhall be ſuch:

Si W. &c. tunc pen. I. &c. oſtenſ. quare cùm idem I. tres curruas pro victualibus et hernesiis ſuis W. ad partes tranſmarinas ducend. pro certa pecuniæ ſummâ, cujus unam part. præmanibus recepit, infra certum terminum inter eos concord. facere et ſolvere apud S. aſſumpſiſſet: idem I. curruas prædict. infra terminum prædict. facere et fabricare non curavit, per quod idem W. diverſa bona et catalla ſua ad valenciam C. marc. quæ in curribus prædict. duci-

duci debuiſſent pro defectu cur. pred', ſutaliter amiſit ad grave dampnum ipſius W. ut dicitur : Et habeat, &c.

And if a man be lodged in any Inne, and any of his Goods B be taken or ſtollen from thence by a ſtranger, he ſhall have an Action upon the Caſe againſt the Inne-keeper, and the Writ ſhall be ſuch :

Rex Vic', &c. Si A. fecerit, &c. tunc pone, &c. B, quòd ſit, &c. oſtenſ. &c. quare cùm ſecundùm Legem et conſuetudinem regni noſtri Angl. hoſpitatores, qui hoſpitia communia tenent, ad hoſpitandum homines per partes ubi hujuſmodi hoſpitia exiſtunt tranſeuntes, et in eiſdem hoſpitantes, eorumque bona infra hoſpitia illa exiſtentia, abſque ſubtractione cuſtodire die ac nocte teneantur, ita quòd pro defectu ipſorum hoſpitatorum ſeu ſervientium ſuorum hoſpitibus hujuſmodi dampnum non eveniat ullo modo : quidam malefactores quendam equum ipſius A. pretii xl li. infra hoſpitium ejuſd. B. apud S. hoſpitati, inventum pro defectu ipſius B. raper. et abduxer', et alia enormia, &c. ad grave dampnum, &c. Et habeat, &c. Teſte, &c.

9 H. 6. Action ſur le Caſe 15. If a man do ſell unto another man a Horſe, and warrant C him to be ſound and good, &c. if the Horſe be lame or diſeaſed, that he cannot work, he ſhall have an Action upon the Caſe againſt him.

And ſo if a man bargain and ſell unto another certain Pipes of Wine, and warrants them to be good, &c. and they are corrupted, he ſhall have an Action upon the Caſe againſt him.

But note, it behoveth that he warrant it to be good, and the Horſe to be ſound; otherwiſe the Action will not lie. For if he ſell the Wine, or Horſe without ſuch warranty, it is at the others peril, and his eyes, and his taſte ought to be his Judges in that Caſe.

But if a Smith prick my Horſe with a nail, &c. I ſhall D have my Action upon the Caſe againſt him, without any warranty by the Smith to do it well. And the Writ ſhall be, *Quare quendam clavum in unum pedis cujuſdam equi J. apud N. fixit per quod putridus devenit, ſic quod idem equus per magnum tempus laborare non potuit, et idem J. profic. equi ſui pred' per idem tempus amiſit, ad dampn'*, &c. For it is the duty of every Artificer to exerciſe his art right, &c. truly as he ought.

And if any Sheriff or under-Sheriff do diſtrain any E Parſons or Vicars, or other Spiritual perſons, in any Lands whereof they are poſſeſſed in the right of their Churches, they ſhall have actions upon the Caſe againſt the Sheriff in this form :

Rit

Rex &c. Si A. perſona Eccleſiæ de C. fecerit, &c. tunc pone, &c. B. Vic. noſtrum Somerſ. et C. Sub-vic. noſtrum ejuſdem Com. quod ſint, &c. oſtenſ. quare cum in articulis cleri regn. noſtri per dominum E. nuper Regis Angl. progenitor. noſtrum conceſſit inter alia continetur, ne miniſtri noſtri, ut Vic. aut alii cap. animalia rector. Eccleſiarum pro diſtrictionibus aliquibus in via Regia, nec in feod. in quibus Eccleſiæ ill. olim fuer. dotat. a, præd. Vic. et Subvic. averia præd. A. apud L. en feodo ipſius A. Eccleſiæ ſuæ præd. de quo eadem Eccleſia olim dotata fuit capter. et ea inde uſque S. duxerunt, et imparcaverunt, et ea imparcata ibidem diu detinuer. contra legem, et conſuet. regni noſtri, et contra form. articulorum prædict. et contra pacem noſtram. Et habeas, &c.

If a man ought to be quit of Toll for himſelf and his Tenants and men, in every Market or Fair, &c. Now if any Officer or Bailiff take Toll of him his Tenants or men, he of whom the Toll is taken ſhall have an action of Treſpaſs upon the Caſe againſt him who took the Toll, or diſtrained his goods for the Toll. And alſo he may have a Writ out of the Chancery directed unto the Bailiffs or ſuch Officers, that they ſuffer them to be quit of Toll, &c. and he may have an *Alias* and a *Pluries*, and Attachment thereupon againſt the Bailiffs or Officers, if they do not obey ſuch Writs, and the *Pluries* ſhall be returned into the Common Pleas or Kings Bench.

If a man hath a Mannor within any Honor, and by preſumption hath had view of frankpledge of his Tenants within his Mannor, &c. Now if he or his Tenants be diſtrained by the Lord of the Honor, to come unto the Leet of the Honor, and to preſent there thoſe things which ought to be preſented within the view of Frankpledge within the Mannor. He who is ſo diſtrained may have a general action of Treſpaſs for this Diſtreſs, or he may have a ſpecial Writ directed unto the Bailiffs or Officers of the Honor reciting the whole matter, commanding them that they ſuffer the [93.] Lord of the Mannor to have and to hold his Leet of his demeſn, &c. as he hath uſed to do; and that they do not diſtrain him or his Tenants in any wiſe to come unto the Leet of the Honor, to preſent any thing which ought for to be preſented in the Leet of the Mannor; and alſo comprehending in the ſame Writ, that if they have taken any diſtreſs for that cauſe that he then re-deliver them, &c. And upon that he may have an *Alias* and *Plurits*, and Attachment againſt them if they do not obey the aforeſaid Writs.

And alſo if a man hath uſed to have a gulf of water in any water, and it hath been uſed that no other ſhould make a gulf in the ſame water between his gulf and the gulf of B. now if another doth make another gulf betwixt them, he ſhall have his Action upon the Caſe in this manner. *Si A. perſona Eccleſiæ de C fecerit &c. R. de T. &c. quare cum idem A. habere debeat, ipſeq; & prædeceſſ. ſui perſon. Eccl. prad. à tempore quo non extat memor. ſemper hactenus habuer. conſ. quend. gurgit. in aqua de W. in B. ito quod in ead. aqua inter gurgit. ipſius A. & gurgit' S. de E. domini Man' de H. nullus aliquem gurgitem levare, palos ſeu claias figer. aut retia aliqua pro piſce inibi cap. ponere debeat, ſeu conſ. aliquibus temporibus retroactis: idem R. claias & palos int' gurgit. prad' A. & S. in ead. aqua fixit, & retia pro piſce inibi capiend. poſuit & ibidem piſcatus fuit, & piſcem inde cepit & aſport. per quod idem A. profic. gurgitis pred' ad valenc. C. a amiſit, & al', &c. Et habeat, &c.*

And if a man hath a liberty to return Writs, and to execute them, if the Sherif *ex officio* enter into the Liberty, and execute any Proceſs there; the Lord of the Liberty ſhall have an Action upon the Caſe againſt him; and theſe Writs do appear in the Regiſter.

If a man be found in arrearages before Auditors, for which the Auditors do commit him to the Gaol, and afterwards he eſcape from thence, now the Gaoler ought to pay the money which was arrear upon the Accompt. And the Gaoler ſhall have his Action upon the Caſe againſt him who eſcaped to anſwer unto the King for the Eſcape, and to the Gaoler for the damages which he hath ſuſtained, the form of the Writ is ſuch:

Rex Vic', &c. Ex gravi querela A. accepimus, quod cum compotum ſuum de tempore quo fuit Ballivus C. in N. idem C. infra libertat. de K. nuper reddiderit & idem B. pro arreragiis compoti illius per auditores ejuſdem compoti poſtmodum arreſtatus, & predict' A. cuſtod. gaol. noſtræ liberat. prad. liberatus fuit, in eadem gaola cuſtodiend. quouſque prad C. de arreragiis prædictis juxta formam ſtatuti de hujuſmodi receptoribus & ballivis proviſi plene ſatisfaceret, prædictus B. à cuſtodia prædict. A. prædicto C. de arreragiis prædict. non ſatisfacto, contra pacem noſtr. evaſit occaſione cujus evaſion. idem A. pretato C. de arreragiis illis juxta formam ſtatuti prædicti plene ſatisfecerit, in ipſius A. damnum non modicum & gravamen. Et quia tranſgr. illam ſi talit. perpetrata fuerit, relinquere noluimus impunitam, Tibi præcipimus, quod ſi prædict. A. ſecerit te ſecur. tunc prædict. B. per corpus ſuum attachias, ita quod eum habeas coram nobis &c. ad reſpondend. nobis de evaſione

ſtus prædict', et prædict. A. de damnis quæ ſuſtinuit occaſione evaſionis illius. Et habeas ibi hoc Breve, &c.

D And if a man play with another at Dice, and he hath falſe Dice with which he playeth, and gets the others mony with theſe falſe Dice, he who loſeth his mony may have his Action upon the Caſe for this deceit, and the form of the Writ is ſuch:

Rex Vic', &c. Si A. fecerit, &c. tunc pone &c. T. de D. *&c. quod ſit, &c. oſtenſ. quare cum idem T. de* D. *machinans ipſum A. ſubdole defraudare, et diverſas pecuniar. ſummas de eod. A. extorquer. eund. A. ad ludend. ad talos cum ipſo T. ad quendam jocum vocat. le Dozen, pro diverſ. pecuniar. ſummis apud* Burton *ſuper* Trent, *excitaſſet et procuraſſet, ac idem A. cum ipſo T. ad talos ad jocum prædict' ibid. luſiſſet, prædict' T. quoſdam talos veraciſ. titulat. eidem A. tradidit ad jactandum, et cum tali prad. ad manus ipſius T. devenire, contigiſſent, idem T. quoſdam alios talos falſos et ſubdole titulatos, quos numerum duodenarium, et non alium qualibet jactu attingere ſciviſſet, falſo et fraudulent. projecit, per quod idem A. magnas pecuniar. ſummas eidem T. ad jocum illum amiſit, ac idem T. ſummas illas ſub colore lucri falſo et deceptive cepit et aſportavit, ad dampnum ipſius A. 5 li. ut dic' et habeas ibi nomina pleg. et hoc Breve. Teſte, &c.* and this Writ was ſued *Anno* 5 *E.* 4. which ſee in the Regiſter, 240.

And although that the Defendant doth not entice the Plantiff for to play, yet if the Defendant play with falſe Dice, &c. by which he gets the Plantiffs mony; it ſeemeth the Plantiff may maintain this Action well enough, becauſe the enticement is not the cauſe of the Action, but the caſting of the falſe Dice, by which he gaineth the mony, &c.

Writ de Diſceit.

E THis Writ lieth properly where one man doth any thing in the name of another, by which the other perſon is damnified and deceived; Then he who is ſo damnified ſhall have this Writ, and the Writ is without the words *vi et armis*, and the Writ is ſuch: vi. Long. 5 E. 4. 46. 18 E. 2. Diſceit 41. This Writ cannot be ſued by Attorney 19 H. 6. 50. it ſhall not abate for form, if it hath matter of ſubſtance.

Rex Vic' Lincoln. ſalut' Si A. fecer', &c. tunc pone. &c. B. &c. ad reſolvend. tam mobis quam præfat' A. quare quod. Breve noſtrum per fin. xx s. ad opus noſtrum per breve prad. capiend. nomine [96]

26 E.3.65. Diſceit 58. The King ſhall have this Writ, if no other will ſue it, becauſe is is penal. 19 H 6.44 So if a man levy a fine, conſeſs an Action or a Recog. or Statute, or appear as vouchee in my name.

prædict. A. *hoc penitus ignorant. fraudulent. et malitioſe in Cancellar. noſtra impetravit, in deception. Curiæ noſtr', ad grave dannum ipſius* A. *et habeat ibi nomina plegii hoc Breve*, &c.

By which it appeareth, That if a man do purchaſe a Writ in my name, for which Writ I ought to pay a fine in the Chancery, as the courſe there is for every VVrit of Debt of the ſum of 40 *l.* or more, to pay for every VVrit 40 *l.* vi *ſh.* and 8*d.* and if it be of 100 marks vi *ſh.* viii *d.* And ſo for every 100 marks vi *ſh.* viii *d.* and ſo for every VVrit of Plea of Land, which is *Præcipe quod reddat*, if it be not a VVrit of Right Patent, for every VVrit which is of the yearly value of 5 marks vi *ſh.* viii *d.* &c. and ſo according to that rate. And then if a man purchaſe ſuch Writ in my name, and I know not thereof, I ſhall have this Writ of Diſceit.

19 H.6.44. 7 H.6.33.

And if I do preſent one unto a Church whereof I am the Patron unto the Ordinary, and one *T.* doth diſturb me, for which diſturbance another doth purchaſe a *Quare impedit* in my name returnable in the Common Pleas againſt the ſaid *T.* I not knowing thereof, and afterwards cauſeth the Writ to abate, or me to be Nonſuit in that Writ, I ſhall have this Writ of Diſceit againſt him who purchaſed that Writ, &c. A

19 H.6.44. It a man make an obligation in my name, I ſhall not have Diſceit, becauſe I may plead *Non eſt factum.*

If one forge a Statute Merchant in my name, and ſueth a *Capias* thereupon, for which I am arreſted, I ſhall have this Writ of Diſceit againſt him that forged it, and againſt him who ſued forth the Writ of *Capias*, &c. B

If a Prior or Abbot have Tithe to preſent unto a Vicridge whereof they are Parſons impropriate and Clerks ſecular or Regular at their wills: and afterwards another doth forge a grant in the name of the Abbot or Prior under their Covent Seal, that they do grant to one of the Pariſhioners, &c. that they ſhall preſent a ſecular Perſon and not a Regular, as a Canon or ſuch like, &c. The Prior or Abbot may have a Writ of Diſceit, and the form ſhall be ſuch: C

Si Prior Bartholomei *de ſuburb.* Lond' &c. *venire* W. *et* R. &c. *quod ſint coram nobis*, &c. *in octabis ſancti* Martini *ubicunque.* &c. *oſtenſ. quare quum idem Prior perſonam ſecularem vel regularem idoneam ad vicariam ſancti* Sepulchri *extra muros* Lond. *quam quidem Eccleſiam idem Prior tenet in propios uſus, pro voluntate ſua preſentare debeat, et hactenus conſuevit, prædict.* W. *et* B. *colluſione inter eos præhabita prædict. Prior*

rem malitioſe prægravare machinantes ſigillum commune prioratus prædicti contrafacerunt, & quasdam literas patentes per quas prædeceſſorem prad. prioris conceſſiſſe debuer. idem Prior et Convent. loci prad' perſonam ſecular. & non alium ad vicar. illam preſentare deberent cum eodem ſigillo contrafacto conſignari fec' & literas illas ſigillo prad' conſignatas in quadam cauſa ad inſtantiam ipſius W. tunc Paroch. Eccleſ. prad. inter ipſum W. & præf. Prior' coram Officiali Cur. Cant. Chriſtianit. ſuper motione frat. R. de F. canonic. prad' Prior. ad preſentac. ſuam ad vicar. prad. per Epiſc. Lond. admiſſi mota exhibuere & ipſum Prior. laborem & expenſis virtute literarum prad' diverſimode in hac parte fatigari procurar. in ipſius Prioris diſpend. non modicum & gravamen. Et habeat ibi nomina plegiorum, & hoc breve, &c.

D And if a man be Attorney for another in a plea real against the Demandant, and afterwards by Covin between the Attorney and the Demandant, the Attorney makes default for which the Land is loſt, the Tenant who loſt the Land ſhall have a Writ of Diſceit againſt the Attorney, and the Writ ſhall be ſuch:

Oſtenſ. quare quum idem A. præf. R. in loquela quæ fuit coram eiſdem juſtic' noſtris per breve noſtrum, inter K. petent. & præf. tenent. de xx. acris terræ cum pertin. in C. attorn. ſuum coram nobis feciſſet ad lucrandum vel perdend. in loquela prædict. præf. B. colluſione inter ipſum & prad. C. habita, ſe ad quend. diem per præf. juſtic' in eadem loquela in banco prad. præfixum gratis abſentaverit, per quod idem A. pro defectu ipſius B. terram prad. per conſiderationem cur. noſtræ amiſit, in deceptionem ejuſdem cur. noſtræ, in ipſiuſque A. grave dannum, & exhæredationis periculum manifeſtum. Et habeat, &c.

E. And if an Action of Treſpaſs be brought againſt many, and the Plantiff and one *I.* by covin between them cauſe certain perſons to come into Court, and ſay that they are the ſame Defendants, and that they make the ſaid *I.* their Attorney, and afterwards the ſaid *I.* as Attorney for the Defendants pleadeth unto iſſue, and afterwards ſuffer the enqueſt to paſs by default, by which the Plantiff doth recover againſt the Defendants: Now thoſe who are the true Defendants ſhall have a Writ of Diſceit againſt *I.* who appeared as Attorney for them, &c. & the Writ appeareth in the Regiſter.

And ſo if *R.* doth recover in an aſſize againſt *W.* certain Tenements and Damages, and becauſe *W.* hath nothing in the ſame County to levy the Damages, *R.* removeth the Record of aſſize into the Kings Bench or Common pleas, to ſue forth Proceſs therupon, and to have Execution of the ſaid Damages recovered, for which the ſaid *W.* to defraud the

ſaid *R.* of his Execution, ſueth forth a Writ to remove the Record in Chancery, ſurmiſing that he will have an attaint thereupon before the Juſtices of Aſſize, &c. by which the Record is removed into the Chancery, and delivered to the ſaid *W.* to carry to the ſaid Juſtices of Aſſize, whereupon he may ſue his Attaint. Now if the ſaid *W.* will not ſue forth the Attaint, but delay him, to ouſt him of his Execution, *R.* who recovered ſhall have a Writ of Diſceit againſt him upon the matter, which appeareth in the Regiſter.

[97]

One *I. de A.* ſueth a *Præcipe quod reddat*, againſt *C.* and *T.* his Wife, who plead a fine levied to the ſaid *T.* by one *F.* and *Margaret* his VVife, Mother of the Demandant, &c. and the Defendant ſaith That his Mothers name is *Margery* and not *Margaret*, and after day is given by the Court, at which day *C.* and his Wife procure and cauſe a ſtranger to come into Court, and conſeſs the fine as the Tenant hath pleaded, by which the Demandant is barred, the Demandant ſhall have a VVrit of Diſceit againſt the ſaid *C.* and *T.* his VVife, as appeareth by the Regiſter. But it ſeemeth, that if *Margery* do levy a fine of her Land by the name of *Margaret*, that ſhe and her Heirs ſhall be concluded to ſay, that ſhe hath another name. But the Tenant may plead, That ſhe by the name of *Margaret* did levy a fine of her Land, &c. and that hath been done where a woman had to her name *Agnes*, and ſhe levieth a fine by the name of *Anne*, it hath been awarded good, and ſhall bind her and her Heirs, and ſhall be pleaded, That ſhe by the name of *Anne* levied the fine. A

5 E. 4. 4 b. B. conſeſſ. & avoid. 40. where a man levieth a fine of my Land in my name, I may conſeſs and avoid the ſame, as to ſay that another of the ſame name levied the ſame, without that that I. levied the ſame; for I. ſhall not have Diſceit by *Littleton* and *Danby*.

If a man ſue a *Præcipe quod reddat* againſt divers Tenants, and they purchaſe a Protection for one of them, ſurmiſing that he is beyond the Seas upon the Kings ſervice, whereas he is and alwaies hath been remaining in *England*, by which the Demandant is delayed, The Demandant ſhall have a VVrit of Diſceit againſt the Tenants for that delay, and the VVrit ſhall be ſuch: B

20 H. 6. 10. and the Writ was brought where he was at the time of this protection. 44 H. 34. If a man ſueth a protection and doth not go, this Writ lieth, contrary if he go, though he preſently return.

Si A. fecerit, &c. tunc pone B. *et* C. *&c. quod ſint coram &c ad reſpondend', tam nobis quam* A. *quare cum idem* A. *in Curia noſtra coram Juſtic' noſtris de banco inſimul attaſſit per breve noſtrum predictos* B. *et* C. *de tribus partibus Manerii de* S. *cum pertin. iidem* B. *et* C. *cur. noſtræ ac legi et conſuetudini Regni noſtri Angliæ manifeſte Rludend. et proſecutionem predict.* A.

in

in hac parte prorogat. machinando ad quendam diem partibus prædict. in eadem loquela coram præfatis Juſtic' præfixum quaſdam literas noſtras de protectione continent. ipſum C. ad partes tranſmarinas in obſequio noſtro tunc profecturum fuiſſe, & ipſum ſic quietum eſſe de omnibus placitis et querelis, except. placitis de dote unde nihil habet, et Quare impedit, et aſſ. novæ diſſeiſinæ, et ultimæ preſentationis, et attinctæ, et exceptis loquelis quas coram Juſtic' noſtris itinerantibus in itineribus ſuis ſummoniti contigerit, coram præfatis Juſtic' porrigi fecerint, ipſe C. tunc poſt et antea in Ang. continua commorante, per quod loquela illa coram præf. Juſtic. remanſit ſine die, in noſtri contemptum manifeſtum, et deceptionem Curiæ noſtræ prædict. legum et conſuetud. prædict. illuſionem manifeſtam, necnon ipſius A. diſpend. non modicum et exhæred. periculum manifeſtum. Et habeas ibi &c.

C In a *Præcipe quod reddat*, if the Sheriff return the Tenant ſummoned where he was not ſummoned, by which the Deſendant loſeth his Land by default at the Grand Cape returned, the Tenant ſhall have a Writ of Diſceit againſt him who recovered, and againſt the Sheriff for his falſe return, and by that Writ the Tenant ſhall be reſtored unto his Land again. And it ſeemeth the Tenant ſhall have this Writ after Judgment given for the Demandant againſt him that recovered before any entry or poſſeſſion: For if the Tenant ſhall not have a Writ of Diſceit before the Demandant doth enter, then perhaps the Demandant will not enter, until the Summoners in the *Præcipe quod reddat*, and the Summoners, Viewers and Pernors in the Grand Cape are dead, and then he ſhall not have a Writ of Diſceit after their deaths; For whether he were ſummoned or not ſhall be tried by the Summoners and Viewers, and Pernors by examining of them. But ſee 3 *E.* 3. That the Tenant ſhall not have a Writ of Diſceit before the Demandant hath entred, *Tamen quære.* And in a Writ of Diſceit the Proceſs ſhall be made againſt the Summoners, Viewers and Pernors to be examined thereupon, &c. And if the Demandant who recovered by falſe return of the Sheriff make a Feoffment of the Land, then the Writ of Diſceit lieth againſt the Demandant who recoverd, and againſt his Feoffee and the Sheriff: and if the Demandant who recovered be dead, and the Sheriff alſo, yet the Writ of Diſceit lieth againſt the Demandants heir and againſt him who is Tenant of the land, if the Summoners, Viewers and Pernors be living: But if the Summoners, Viewers, or Pernors be dead, then the Writ of Diſceit is loſt. But a Writ of Diſceit lieth if any of the Summoners, Viewers, or Pernors be alive, for if they ſay that they did not ſummon him, then the

3 E. 3. Diſceit 47.
18 E. 2. Diſceit 54.
38 E. 3. 16. cont.

Plantiff in the Writ of Diſceit ſhall recover his land and ſhall be reſtored, &c. for it ought to be done by two Summoners at the leaſt, and two Viewers, &c. And if any of them do not that which is returned they ought to do, then the Writ is not executed as it ought to be, by which the Plaintiff in the Writ of Diſceit ought then to be reſtored, &c.

35 H.6.46.

And in a *Scire facias* to execute a fine, if the Sheriff return the Tenant ſummoned by two Summoners, if it be not true, yet the Tenant by the return ſhall loſe the land, for execution ſhall be awarded upon the return if the Tenant do not appear, and then the Tenant ſhall have a Writ of Diſceit againſt the Sheriff, and him who had execution, and him who is Tenant, and ſhall be reſtored to the land. D

And ſo if a man ſue a *Scire facias* upon a recogniſance of debt, and the Sheriff return the defendant ſummoned where he is not ſummoned, for which the plantiff hath Execution awarded, the defendant ſhall have a Writ of Diſceit againſt him who had execution, and the Sheriff ſhall be puniſhed by this VVrit for his falſity, and the party who recovered ſhall make reſtitution of that he recovered, &c.

[98]

35 H.6.46. 8 E.4.6. *cont.* where a man loſeth by *Præcipe in Capite*, where he ought to have ſued in the Lords Court, and the Lord brought Diſceit for the profits of the Court. 42 E.3.20. 17 E.3.18. 20 E. 2. Diſceit. 5. *ac.* 19 E.3. Diſceit,3. 19 E. 2. Diſceit 56. 20 E. 3. Diſceit,4. he ſhall not have Diſceit by *Wilby. Hill cont.* 1

And if a man levy a fine at the Common Law unto another of land which is in ancient demeſn, the Lord of ancient demeſn ſhall have a VVrit of Diſceit againſt him who levied the fine, and he who is Tenant ſhall avoid the Fine, and there he who ought to give the land ſhall be reſtored unto his poſſeſſion, and title which he hath given by the fine, becauſe the fine and gift therby is avoided. But if he who levieth the fine, have after by his deed releaſed unto him who hath the poſſeſſion by the fine or by the deed, confirm his eſtate in the land, then he unto whom the releaſe or confirmation is made, ſhall have and keep the land notwithſtanding that the fine be avoided, becauſe that releaſe or confirmation made unto him being in poſſeſſion, hath made his eſtate firm and rightful, againſt him and his heirs who releaſed or confirmed the ſame. A

If a man do recover in a Writ of Waſt where the Tenant was not ſummoned, &c. the defendant ſhall have a VVrit of Diſceit, and ſhall be reſtored, *T.9.E.3.* B

If husband and wife loſe the land of the wife by default, they may ſue a VVrit of Diſceit, and if the husband dieth, it ſeemeth the wife may ſue a VVrit of Diſceit to be reſtored to her land, &c. or have a *Cui in vita* upon the Statute at her election; and the VVrit of Diſceit ſhall be directed unto the ſame Sheriff who did the Diſceit, and falſe return, and not unto the Coroners, as appeareth, *Trin.20 E.3.* Yet it ſeemeth C

ſeemeth it is not Error, if it be directed unto the Coroners, &c. 20 E.3. Diſceit 5.

D And in a Writ of Diſceit, if the Sheriff return one Summoner dead, yet the other Summoner ſhall be examined, &c. And if it be found that he did not ſummon, &c. the party ſhall be reſtored unto the land, and ſo if one Viewer, or Pernor did not do that, which he ought to do, the party ſhall be reſtored, becauſe it ought to be done by both, &c. But if Summons be by four men, as long as two of them be alive, the Tenant who loſt may have a Writ of Diſceit. 8 H.6.1. 18 E.4.1.

E And a Writ of Diſceit lieth againſt him who embeſleth a Writ, and alſo againſt him who procureth another to embeſle a Writ, if it be embeſled, &c. 19 H.6.19. 50. 71.

F And if a man doth bargain with another to enfeoff him of certain lands, and afterwards he enfeoffeth another man, he with whom he made the bargain ſhall have a Writ of Diſceit. 20 H.6.14. 16 E.4.9.

G And if a man do recover in a *Quare impedit* by default, &c. if the Defendant be not ſummoned, he ſhall have this Writ, and the ſummoners and pledges upon attachment ſhall be examined thereupon. And if the Diſceit be found, he ſhall have a Writ to the Biſhop, &c. for him. 26 H.6. Diſceit 15. 27 H.6.5. vid. 34 E.3. Diſceit 57.

H If an Action of debt be brought againſt two as Executors, where one of them is not Executor, if he who is not Executor confeſs the action; he who is Executor ſhall have a Diſceit againſt him and recover as much in damages. Neither the Clerk nor the Def. ouſted. 9 E.4. 33. *La. ac.*

I If an Attorney be not informed by his Client to plead in any Action, and he plead, *Quod ipſe non eſt veraciter informatus, & ideo nullum reſponſum, &c.* the ſame ſhall be entred to ſave him of damages in a Writ of Diſceit brought againſt him by his Maſter, &c. 10 E.4.9.

K If a man ſell cloths, and warrant them to be of a certain length, if they be not of ſuch length, he who bought them ſhall have a Writ of Diſceit againſt him upon his warranty, although the warranty be only by word: but if the Warranty be made at another time after the bargain made, then it ought to be in writing, otherwiſe he ſhall not have an action upon that warranty: for he ſhall not have an action of Diſceit therefore, if the warranty be not made upon the bargain, and at the time of the bargain. 11 E.4.6. 5 H.7.41.

L The Writ of Diſceit ought to be brought in the County where the Diſceit is ſuppoſed to be done. 9 E.3.7.

M If a man recover in a *Præcipe in Capite* by default where the lands are not holden of the King, nor he hath not the Lords Licenſe to ſue in the Common Pleas, the Lord ſhall 1 F.4.6.

have

have a Writ of Diſceit, and recover damages; but the recovery ſhall ſtand in force, and the Lord ſhall have Seignory, and he who recovered ſhall alſo hold over of the King by way of Eſtoppel.

If a man procure another to ſue an Action againſt me to N
troubl̃e me, I ſhall have a Writ of Diſceit.

A Writ of Diſceit ſhall be maintainable againſt the At- O
torney and the Sheriff, becauſe they put a Writ of *Habere facias ſeiſinam* upon the file of the Sheriffs Writ, where they have not any Record to warrant it.

21 E. 3. 20. 5 E. 4. 6. 17 E. 3. 31. Diſceit 37.

If a man levey a fine of Land in ancient demeſn, and alſo P
of Land at the common Law, the party ſhall have a Writ of Diſceit for the ancient demeſn Land, and ſhall avoid the fine for that Land, and the fine ſhall ſtand good for the Land at the Common Law.

If a man loſe Lands by default in a *Præcipe quod reddat*, Q
and dieth, his Heir ſhall have a Writ of Diſceit as well as the Father, and ſhall have reſtitution.

15 E. 3. Diſceit 43. 48 H. 3. 30.

If a man have Execution by default upon a Recogniſance R
in a *Scire facias* ſued againſt another, and the Defendant dieth, his Executors ſhall have a Writ of Diſceit, and ſhall be reſtored &c. If the Diſceit be found that their Teſtator was not warned, there the Garniſhors ſhall be examined, &c.

[99]

And if a man recover an Annuity, and afterwards ſueth S
a *Scire facias*, and recovereth by default, the Defendant ſhall have a Writ of Diſceit if he were not warned.

18 E. 3. Diſceit 42.

And the Vouchee ſhall have a Writ of Diſceit where he T
loſeth by default if he were not ſummoned, *&c.*

3 & 4 E. 3. Diſceit 45.

In a *Præcipe quod reddat* againſt the Husband and the Wife U
at the grand Cape, the Husband appeareth in Perſon, and the Wife appeareth by Attorney, who hath a VVarrant which is inſufficient, by which judgment is given upon the default of the VVife againſt the Husband and VVife, &c. yet they ſhall have a VVrit of Diſceit if they were not ſummoned, &c.

18 E. 2. Diſceit 54. 55.

And where a man loſeth by default in a *Quare impedit*, or W
VVaſt, it behoveth that the Summoners and the Pledges upon the Attachment, and the Manucaptors upon the diſtreſs ſhall be examined, when the Writ of Diſceit is brought therefore. See in the title of Diſceit in the abridgments for that matter.

19 E. 2. Diſceit 56.

If a man ſue a Writ of *Monſtravit* againſt another to ac- X
count, &c. where he hath ſufficient Lands in another County, by which he may be brought to anſwer by Writ of Account, the Defendant ſhall have a Writ of Diſceit againſt the

the Plaintiff who ſueth the *Monſtravit, quod vi. Mich.9. E.2. Fitz. Diſceit. 52.*

If Tenant for life loſeth by default where he was not ſummoned, and dieth; he in the Reverſion ſhall not have a Writ of Diſceit, becauſe he ſhall not have a Writ of Error, if not by the Statute, &c.

E. If a man be Tenant for life of a Mannor in ancient demeſn, and the Tenant of that Mannor doth levy a fine of his Land at the Common Law, the Lord of the Mannor who is Tenant for term of life, ſhall have a Writ of Diſceit, and after his deceaſe, he in the Reverſion ſhall have a Writ of Diſceit, and reverſe that fine. 1 E.3.5. So of Leſſee of years.

F. If the King doth recover in a *Præcipe quod reddat*, or in a *Formedon* againſt another man by default, the Tenant ſhall have a Writ of Diſceit as well as he ſhall have a Writ of Error, where the King recovereth by erroneous proceſs, &c. or erroneous Judgment. See for this matter, *M.10 H.4.* in title Traverſe in the Abridgments.

G. And this Writ of Diſceit ſhall ſometimes iſſue out of the Common Pleas, or he may ſue it out of the Chancery if he will, as if a man loſe Lands by default in a *Præcipe quod reddat* in the Common Pleas, the Tenant if he were not ſummoned, ſhall have a Writ of Diſceit out of the Common Pleas, if he will, or out of the Chancery. 22 E.3. Diſceit.

H. And ſo if a man have Execution upon a Recogniſance in the Common Pleas, or Kings Bench by default, &c. the Defendant ſhall have a Writ of Diſceit, if he were not ſummoned out of that Court where the Execution was ſued, &c. or out of the Chancery at his Election. 17 E.3.51. Diſceit 39.

I. And there are divers other Writs of Diſceit, in the form of a Writ of *Audita querela*, as if one ſue a *Præcipe quod reddat* againſt another, and the Tenant is eſſoyned at *Quind. Paſch.* which eſſoyn is adjorned until *15 Trin.* the Term following, and the Demandant and his Attorney by Covin betwixt them recovered a Writ in the file of Writs, that the Tenant hath made *N.* and *M.* his Attorneys joyntly and ſeverally at the ſaid *Quind. Paſch.* by which the Demandant challengeth that eſſoyn, becauſe he had Attorney in the Writ not eſſoyned, by which at the day of Adjournment the eſſoyn is quaſhed, and the Demandant recovereth the land by this default at *Quind. Paſch.* Now the Tenant ſhall have a Writ of Diſceit againſt the Demandant and his Attorney, and the form of the Writ ſhall be in the nature of *Audita querela*, and ſhall be directed unto the Juſtices of the Common Pleas, and is ſuch: 17 E.3.51. Diſceit 9.

Rex

Rex Juſtic' ſuis de banco ſalutem. Monſtravit nobis I. *de* B. *quod cum* W. *de* B. *nuper implacitaſſet ipſum* I. *coram vobis in banco prædicto breve noſtr. de uno meſ. &c. in* B. *& placit. prædict. ad caption. inquiſition. propriæ perſequut. fuiſſet, dieſque partibus prædict. à die Paſch. proxim. præterito, &c. in* xv. *dies data extitiſſet, ad quem diem idem* I. *ſe fecit eſſoniari, & eſſon. ill. ad judicat. fuit uſque ad* xv. S. *Trin. tunc proxim. ſequent. prædict.* W. *&* P. *attorn. ſui colluſion. inter eos præhabita machinant. præf.* I. *de tenemento prædict. exhæredar.* S. *de* F. *ſervient. ipſius* W. *de* B. *&* W. *de* P. *attorn. ipſius* I. *ipſo dis penitus ignorante recordari, & breve de attorn. in filaciis brevium in* xv. *Paſch. in banco prædict. & quandam calumniam ſuprad. dict. eſſon. non faciſſent, & eſſon. prædict. pro eo quod prædict.* I. *attorn. ſuum in eodem placit. habuit non fatere aſſeruiſſet, quod ad dict.* xv. S. *Trin. ſeiſina de tenemento prædicto pro eo quod attorn. prad.* I. *ad dictam quinden. Paſch. eſſoniatus non fuerit quod eidem* W. *de* B. *per conſideration. Curiæ extitit adjudicata, in deceptionem Cur. noſtra prædict. & ipſius* I. *grave dampnum, ac exhæredationem manifeſtam, ſuper quo idem* I. *per petitionem ſuam coram nobis & conſilio noſtro in parliamento noſtro exhibitam, Nobis ſuplicavit, ut ei de remedio providere velimus in hac parte. Et quia prædict.* W. *de* P. *ſuper præmiſſis coram vobis in banco prædicto allocutus ea cognovit ut dicitur. Vobis mandamus quod audita querela ipſius* A. *ſuper præmiſſis, vocatiſq; coram vobis tam præf.* W. *de* B. *& W. de* P. *quam* S. *de* F. *auditiſq; hinc inde eorum rationibus, ſi per inquiſitionem ſic inde faciend. ut per recognitionem eorundem* VV. VV. *& S. vel eorum alterius vobis conſtare poterit, quod* I. *tenementa prædicta per colluſionem prædictam amiſiſſet; ut eſt dictum, tunc tam ſuper deceptione et colluſionem prædictam quam ſuper recuperationem tenementi prædicti habend. jam pro nobis quam præfat.* I. *juſtitiæ complementum fieri faciatis prout de jure fuerit faciendum. Teſte, &c.*

If a Notary or other perſon of Covin counterfeit the Seal of any parſon or Vicar, and forge Letters of Reſignation of his Parſonage or Vicarage, in the name of the Parſon or Vicar of his Benefice, he ſhall thereupon have a VVrit of Diſceit, and the VVrit is in the Regiſter. But whether by that he ſhall be reſtored unto his Benfice, *Quære*, it ſeemeth not, becauſe the removing of him is a Spiritual act.

If two ſeveral men come before the Mayor of the Staple, or before other Mayor of a Town, and there one acknowledgeth unto the other 100 l. in the name of another man, affirming him to be ſuch a perſon, which in truth he is not: for which the other perſon is troubled, and ſued upon the Statute, and taken in Execution, &c. he ſhall have a

VVrit

Writ of Diſceit againſt the two perſons, &c. and ſhall recover damages againſt them.

B And ſo if a man be bounden unto a Prior by a Statute-Merchant in 40 l. to be paid at a certain day, at which day he payeth the money unto the Prior, &c. and afterwards another perſon in the Priors name, cauſe the Statute to be certified in the Chancery, and ſue Execution thereupon, the Prior not knowing thereof, he who was bounden and hath paid the money, ſhall have a Writ of Diſceit againſt the Prior, and thoſe who ſued the Execution in his name.

C If the Eſcheator, by virtue of a Writ directed to him, doth ſeize into the Kings hands the Lands of any perſon who holdeth of the King in Chief, by which the King commits the Wardſhip of thoſe Lands unto another, who grants them over unto another during the Nonage of the Heir. Now if the under Eſcheator of his own authority return another Office without Enqueſt, &c. and diſturbeth the poſſeſſion of the ſecond Grantee, the ſecond Grantee ſhall have a Writ of Diſceit againſt the under Eſcheator: And ſo if the Eſcheator, of his own authority have ſo done without taking any Enqueſt, &c. according to the courſe of the Law; and theſe Writs are in the Regiſter.

And thereby it appeareth, that an Eſcheator may have an under Eſcheator, as well as the Sheriff may have an under Sheriff.

D And alſo it appeareth, that an Eſcheator ſhall be puniſhed, although he be an Officer of Record, if he return any Office, *virtute Officii*, which he hath not taken any Enqueſt to enquire of the ſame: and the Proceſs in the Writ of Diſceit is Attachment and Diſtringas.

Writ de Parco fracto.

A Writ of *Parco fracto* lieth where a man diſtraineth Cattel for damage feſant, or for Rent, or Service, and put them into the Common Pound, or into another Pound or place, which ſhall be ſaid to be a lawful Pound; and he who hath property in the Cattel, or other perſon taketh the Cattel out of the ſaid Pound, and driveth them where he pleaſeth: he who diſtraineth him for, &c. ſhall have the VVrit *de Parco fracto*.

If a man ſendeth his Servant to diſtrain for Rent or Services, and the Servant diſtraineth the Cattel, and impoundeth them, and a ſtranger taketh them out of the Pound, the Maſter ſhall have the VVrit *de Parco fracto*, and not the Servant, for it is the Maſters Pound.

If

3 H.7.9. It is a Pound as well as if it were in his several. Fairfaic. cont.

If a man distrain for Rent, or Services, or for damage-feasant, and put the Cattel in the Land or Close of a Friend with his license, and he who owneth the Cattel taketh them out of the said Close, he who distrained them, shall have the Writ *de Parco fracto*, and not he whose Close it is: for who owneth the Close, ought to have an Action of *Quare clausum fregit*, &c. for that it is not his Pound, but the Pound of him who distraineth the Cattel; and the form of the Writ is:

Rex Vic' Lincoln. salutem. Si A. &c. tunc pone &c. B. ostens.] *quare cum idem A. in damno suo apud N. quædam averia* vel sic, *averia prædict. B. cepisset, & ea secundum legem & consuetudinem regni nostri ibidem imparcasset, idem B. parcum illum vi & armis fregit, & averia prædict. cepit & abduxit, & alia enormia ei intulit, ad grave damnum, &c.*

X And note, that this Writ is *vi & armis*, and he shall not shew in the Writ, what kind of Cattel they are, nor to whom the property of the Cattel doth appertain, if that he please not so to do.

And if a man send his Servant for to distrain for Rent, or G Services, or for damage feasant, then the form of the Writ is such:

Ostens. quare cum idem A. in damno suo apud N. per B. servient. suum quendam bovem, vel, *quadam averia cepi fecisset & idem B. bovem illum,* vel sic: *averia illa secundum legem & consuetudinem regni nostri* Angl. *ibidem imparcasset, apud C. parcum illud vi & armis fregit,* &c. vel sic, *per Abbe. ostens. quare cum idem Abbas in domo sua in suburbio* Linc. *per fratrem I. custod. cell. nostræ sanctæ* Mariæ Magdal. *extra* Lincoln. *quadam averia,* &c. Aliter pro def. ita in curia dom', &c. *quare cum idem A. in fest. suo apud N. per servient. suum averia prad. B. pro quadam defalta, quam idem B. fecit in cur. ejusdem A. versus E. in loquela quæ fuit in eadem curia inter, &c. per considerationem curiæ prædict. capi fecisset, & idem A. averia illa secundum, &c. imparcasset prædict. B. parcum,* &c.

A If a man do distrain for Amercement in a Hundred, and H impound the Cattel, and the other taketh them out, the Writ shall be:

Quare cum idem A. per B. et C. ballivos suos de hundred. de N. quædam jumenta ipsius F. apud S. infra præcinctum hundred. prædict. pro quadam amerciamenta, ad quod idem F. amerciatur fuit in eadem hundredo, ad opus prædict. A. levand. capi fecisset, et idem B. & C. jumenta, &c.

41 E.3.26.
47 E.3.13.
12 H.7.15.

And in this Writ he ought to shew, that the property of the Cattel where in him who was amerced, because he caused distrain

diſtrain the Cattel of other men for this amercement: but for Rent or Service it is otherwiſe. For the party may diſtrain the Cattel there levant and couchant upon the Lands. [101]

If the Queen do diſtrain for a debt or amercement due unto her, and impound the Cattel, and a ſtranger doth break the Pound, and take them out, then ſhe ſhall have a Writ, and the Writ ſhall be ſuch:

Rex Vic' S. ſalutem. Pone per vad' &c. P. *de* E. *et* C. *de* D. *quod ſint &c. ad reſpondendum tam nobis quam* Annæ *Reginæ* Angliæ, *quare cum* W. *de* R. *ballivus libertatis predict. Reginæ, hundred. de* C. *in quo eadem Regina ſicut in cæteris terris et tenementis ſuis ſibi per nos conceſſis habet returnum omnium brevium noſtrorum, prout ad ipſum* W. *ratione officii ſui pertinuit, virtute returni cujuſdam brevis ſibi pro te infra libertatem præd. fuit pro quodam debito ad opus predict. Reginæ de predict.* P. *per ſum. ſcaccarii noſtri levando, averia predict.* P. *apud* B. *cepiſſet. & ea ſecundum legem et conſuetudinem regni noſtri ibidem imparcaſſet, predict.* P. *et* C. *parcum illud vi et armis fregerunt, et averia predict. ceperunt et abduxerunt, et alia enormia ibidem perpetraverunt in noſtri contemptum, et ipſius Reginæ grave dampnum, et contra pacem noſtram, &c.*

And when the Queen ſueth any VVrit, the VVrit ſhall not ſay, &c. *Si Anna Regina Angl. fecerit te ſecur' &c.* for ſhe ſhall not find ſureties as a Common perſon ſhall do, for ſhe ſhall not be amerced, as appeareth by the VVrit before. 4 11 E. 3. 21. Lit. 132.

If the Husband do diſtrain for Rent or Services which he hath in right of his VVife, and a Stranger taketh them out of the Pound, the Husband ſhall have the VVrit *de Parco fracto* in his own name: but yet it ſeemeth he may ſue the ſame in his name, and in the name of his VVife, and joyn the Wife with him, *tamen quære.* B C

Writ of Reſcous.

THe Writ of Reſcous lieth where a man doth diſtrain for Rent or Services, or for damage feſant, or would impeach or impound the Cattel, and the other party doth reſcus them, or taketh them from him, then he ſhall have this Writ of Reſcous, and the Writ is ſuch: D

Rex Vic', &c. Si A. fecerit &c. tunc pone &c. oſtenſ. quare cum idem A. in feodo ſuo apud S. quædam averia, vel ſic: *averia præd. B. cepiſſet, et ea ibidem ſecundum legem et conſuetudinem regni noſtri Angliæ imparcari voluiſſet præd. B. averia præd. vi et armis reſcuſſit et alia,* &c. vel ſic: *Quare cum idem A. in feodo ſuo apud S. pro conſuetud. et ſervit. ſibi debitis per* C. *ſervient.*

ſervient. ſuum quædam averia capi, vel ſic: Quandam carectam ipſius B. capi feciſſet. Et idem C. carectam illam uſque manerium prædict' A. de S. ſecundum, &c. ducere voluiſſet prædict. B. carectam illam vi, &c. in ipſum C. inſultum fecit, &c.

And ſo it appeareth he may joyn, in a VVrit of Reſcous, the aſſault and battery of his Servant.

And if he do diſtrain Cattel, and other dead Chattels, then the VVrit ſhall be; I

Oſtens. quare cum idem A. in feodo ſuo apud S. pro conſuetudinibus et ſervitiis ſibi debitis, averia, & catalla prædict' B. exiſſet, & averia illa imparcaſſet, & catalla prædicta nomine diſtrictionis ſecundum legem & conſuetudinem regni noſtri. Angliæ detinere voluiſſet, idem C. averia illa reſcuſſit, & catalla prad, eidem A. abſtulit, & alia. &c.

And if he do diſtrain for a Rent-charge, the VVrit is ſuch:

Quare cum idem A. in quodam tenemento ipſius B. apud N. pro quodam annuo reditu per ſcriptum ipſius B. obligatorium diſtrictionis ipſius A. obligato pro reditu prad. à retro exiſtent. quædam catalla ipſius B. cepiſſet, & ea nomine diſtrictionis ſecundum legem, &c. ibidem detineri voluiſſet, prad. B. catalla prædict', &c.

And note, That if a man ſend his Servant to diſtrain for J Rent, or Service, or damage feſant, and Reſcous be made upon the Servant, the Maſter ſhall have the Writ of Reſcous and not the Servant: for the wrong is done unto him who ought to have the Rent or Service, or is damnified, &c.

If a Collector or ſub-Collector diſtrain for Fifteens, and Reſcous be made, he ſhall have the Writ of Reſcous, and the Writ ſhall be ſuch:

Si W. de S. ſubtaxator decimæ in villa de S. nobis per civ. et burgenſ. regni noſtri ultim. conceſſ. &c. fecerit te, &c. tunc pone B. &c. ad reſpond. tam nobis quam præfat. VV. quare cum idem VV. quædam catalla ipſius B. pro certa pecuniæ ſummarotione decim. prædict. aſſeſſ. cepiſſet, & catalla illa ibidem nomine diſtrictionis nomine noſtro detinere voluiſſet prædict. B. catalla illa præfat. W. ibidem inſultum fecit, et ipſum vulneravit et vulneravit, &c. et alia, &c. in noſtri contemptum et prejudicium, et præd. W. grave damnum, et contra pacem, &c. G

And if the Bailiffs or Officers do arreſt certain perſons, and others reſcue them from the Officers, then he who cauſed them to be arreſted, ſhall have the Writ of Reſcous, and the Writ ſhall be ſuch:

Quare cum idem Prior per chartam Domini E. quam inſpexim. habere debeat apud W. liberam curiam ſuam de omnibus hominibus

hominibus ſuis tam burgenſ. quam aliis, & de omnibus placitis et querelis & attachiamentis qualitercunque contingent. una cum priſis et omnibus aliis ad homines ſuos ſpectant. Ac idem Prior per B. ballivum ſuum apud F. R. & M. homines ipſius Prioris pro diverſis tranſgreſſ. apud T. infra libertatem prædict. Prioris per ipſos (ut dicit.) contra pacem noſtram factis, unde clamor & huteſium ibidem levat. fuerit, attachiari feciſſet, et idem Prior ipſos R. & M. ibidem ſecundum legem et conſuetudinem detinere voluiſſet, juſtic. in hac parte in Curia Prioris prædict. ſubitur. prædict B. & L. præfat. R. & M. de prædict. tranſgreſſ. non juſtificat. a cuſtod. ipſius B. vi & armis ceperunt, & quo voluerunt, abire permiſerunt, & alia enormia &c. ad grave dammum ipſius Prioris, & libertatem ſuæ læſion. manifeſtam, & contra pacem noſtram.

And note, that if the Bailiff or Sheriff, or other Officer of the King do arreſt a man or diſtrain him for debt, or other ſervice due to the King and Reſcous is made, then the Bailiff or other Officer ſhall have the Writ of Reſcous in his own name and not the Kings, and the Writ ſhall be ſuch:

Si T. hall. hundred. de F. fecerit, &c. tunc pone, &c. ad reſpondendum tam nobis quam præfat. ball. quare cum idem ball. juxta officii ſui debit. W. quem per Vicecomitem noſtrum Com. prædict. per breve noſtrum de judicio ſibi directum capi præciperimus apud K. virtute mandati noſtri prædict. ceperiſſet. et ipſum uſq; caſtrum noſtrum R. in priſona noſtra ibidem moraturum ducere voluiſſet, prædict. R. & S. ipſum W. apud villam de K. vi & armis reſcuſſerunt, & alia, &c. in noſtri contemptum, & prædict. ball. grave dammum, & contra pacem noſtram, & habeas, &c.

A And if the Bailiff would arreſt any perſon, and he himſelf do reſcue himſelf, and will not obey the arreſt, then the Writ ſhall be ſuch:

Si H. de R. ball. villæ noſtræ de S. fecerit, &c. tunc pone B. &c. quare cum idem H. juxta officii ſui debitum præfat. B. pro quadam huteſio ſuper ipſum per W. de S. apud C. levat. ad querimoniam prædict. W. ſecundum legem & conſuetudinem regni noſtri attachiaſſet, prædict. B. ſe juſticiari non permittens attachiament. prædict. vi & armis fregit, & in ipſum H. ibidem inſultum, &c.

B And if the Sheriff ſend unto the Bailiff of the Liberty to levy fines and amercements for the King, and the Bailiff diſtrain certain Cattel, and the Reſcous is made. Now the Lord of the liberty ſhall have a Writ of Reſcous of the Reſcous done to the Bailiff, and for the battery and aſſault made upon him, and for the loſs of his Service and all in one Writ.

If the Kings Bailiff do diſtrain for Rent, and Reſcous is made, the Bayliff ſhall have the Writ of Reſcous, and not the King.

And if a man sue forth forth an Execution, and hath *Capias* directed to the Sheriff to arrest the party and the Sheriff make his Warrant to the Baily of the Queens Liberty where the party dwelleth, to arrest him, by which the Bailiff doth arrest him, and others do rescue him from the Bailiff, he who sued forth the Writ of Execution, shall have the Writ of Rescous against him that rescued him, as appeareth by the Register: but yet it seems reasonable that the Bayliff have a Writ of Rescous in such case: for some say the Bayliff shall be chargeable to him, who sued forth the *Capias*, &c. and for the arrest, *Tamen quære.*

And it appeareth by the Register, That if a Writ be directed unto the Sheriff, to levy the expences of the Knights at the Parliament, and the Sheriff make his Warrant unto the Bayliff of the Liberty of the Bishop of *Ely*, to levy the sum assessed; &c. for which the Bailiff by his under-bailiff doth take certain Cattel and would impound them, and other persons do rescue the Cattel and beat the under-bailiff, that the Bailiff shall have the VVrit of Rescous against them; and there it seemeth that the Knights which should have the money, shall not have a Writ of Rescous for the same Rescous, because it is not a duty unto them by any person certain, but to be levied of the Inhabitants of the Towns.

And if the Lord do distrain his Tenants Cattel, and a strangers Cattel, for Rent or Service behind, when there is not any Rent or Service behind, the stranger may rescue his own Cattel, but not the Tenants, as it seemeth. And that as it seemeth by the Statute of *Marlebridge cap.* 3. which willeth, *Non ideo puniatur Dominus per redemptionem*, yet the opinion of *Thorpe M.* 31 *E.* 3. is contrary, for he saith, the stranger may rescue as well the Tenants Cattel as his own. *Quære.*

vi. Lit. 52. 9 H. 7. 4. And Rescous is not, but where he hath the possession of the Cattel, or the thing of which the Rescous is supposed to be made; For if a man come to arrest a man or to distrain, and he is disturbed to do the same, he shall not have a Writ of Rescous, but an Action upon the Case.

And the King shall not have the VVrit for a Rescous done to his Officer, *qd. vi. P.* 20. *E.* 3. but he may cause him to be indicted for the same.

Audita Querela.

THis VVrit of *Audita Querela* lieth as well upon matter in fact, as upon matter in writing, as after appears. And this VVrit shall be directed unto the Justices of the

the Common Pleas or Kings Bench, and there where *A.* and *B.* come before the Mayor, &c. and *B.* doth acknowledge himself to be bounden in 100 *l.* to *A* in the name of *C.* before the Mayor; and affirmeth his name is *C.* and afterwards *C.* is arrested by force of this Bond, and Statute, and taken in Execution; Now *C.* shall have *Audita Querela* against *A* and *B.* and the form is such:

Rex Justiciariis suis de banco salutem. Querelam C. recepimus continent. quod A. & B. collusione inter eos apud W. prahabita, Cur. nostri illudere & præf. C. calide pregravare machinantes nuper coram C. Majore villæ nostræ Southampton, & R. Clerico ad recognitionem dabit. apud S. accipiend. deputat. comparentes ipsum C. &c. C. sacramento corporali ad hoc præstit. astrictum asserunt, per quod idem B. sub nomine ejusdem Cipræf. A. 100 li. ad certt. terminum jam præterit. solvend. coram eisdem Major. et Clerico, juxta formam statuti dudum apud Acton Burnel pro mercatoribus editi, se deber. recogn. et postmod. ipsum C. pro eo quod ipse præd. 100 li. præf. A. ad terminum præd. non solvit, per præf. Majorem capi, et in prisona nostra salvo custodiri, quousq; idem A. de eisdem 100 li. plen. satisfac. falsè et malitiosè procurer, in ipsius C. damnum non modicum, et ut ceptimus Cur. nostræ manifestam: super quo idem C. nobis supplicavit, ut sibi remedium congruum adhiberi velimus: Vobis mandamus, quod audito querelæ ipsius C. in hac parte, et Breve nostrum vobis præf. A. et B. ac præf. Majore et Clerico, auditisque hinc inde partium rationibus eidem C. super falsitat. malitia, et decept. præd. plenam et celerem justitiam fieri facit. prout de jure, et secund. consuet. regni nostri fore videritis faciendum: Teste, &c.

A If a man Leases Lands unto *A.* for life, and afterwards by fine grants the reversion unto *B.* in Fee, and dieth, and the heir of the Recognisor, and one *L.* by Covin betwixt them sue a *Precipe in Capite* against the said *A* supposing the Land to be holden of the King, whereas it is not holden of the King but of another person: And in this *Precipe in Capite* they cause one *F.* to appear as Attorney for *A.* and to joyn the Misc. in the said Writ; and afterwards the Attorny by Covin doth make default, for which Judgment is given against *A.* Now upon the same matter he shall have an *Audita Quer.* directed unto the Justices of the Common-pleas, commanding them to proceed as well for the restitution of the Land, as upon the Discents, and to do speedy Justice, as of right according unto the custom of the Realm they ought to do. And the Writ is such:

Rex Justic. suis de banco salut. Monstravit nobis A. ut rem

ipſe nuper manerium de C. cum pertinen. in Com. L. ad terminum vitæ ſuæ tenuiſſet ex dimiſſione Lac H. fil. & hær. prædict. J. manerium prædict. T. de S. et hæred. de corpor. ipſius T. exeuntibus (ut dic.) per finem inde in Cur. noſtra coram Juſtic. noſtris de banco apud W. levat. poſt mortem præd. A. habend. conceſſiſſet, B. filius & hæres prædict. H. & L. colluſionis inter eos præhabita, præfat. A. de prædict. manerio amoveret, et præfat. T. de reverc. manerii prædict. excluder. machinantes breve noſtrum (quod vocat. Præcipe in cap.) Vic. noſtro Leiceſtr. ad certum diem jam præterit. returnabile de manerio prædict. ac ſi idem maner. de nobis teneret. in capite cum non teneat. ſub nomine præd. E. verſus præf. A. & T. in Cancellar. noſtra impetrari, & brev. noſtr. prædict. quod præf. A. & T. juxta formam brevis præd. ſum. fuerunt eſſendi coram vobis ad diem præd. per præf. Vic. return. ac quendam ignotum, qui ſe R. de S. nominari aſſeruit coram vobis in banco præd. apparer. ad perdendum vel lucrand. in loquela præd. per præf. A. & T. attornat. ipſius A. & T. de impetratione brevis ſum. et attornato præd. ſub nomine ſuo ut permitti, facto penitus ignorantibus falſo & malitioſe procuraverunt, ac præf. attornat. ad eundem diem coram vobis comparere poſuerit ſe in magnam aſſiſam noſtr. & petierit recognition' fieri, utrum iidem A. & T. majus jus habuer. exend. dictum man. cum pertinen. ſicut illud tenuer. ad præd. E. habend. dict. man. ſicut illud petiit per quod per defaltam quam iidem A. & T. poſtmod. fecerunt, in ead. Cur. per vos conſideratum fuit ibid. quod præd. E. recuperaret ſeiſinam ſuam de præd. man. cum pertin. verſus præf. A. & T. tenend. eidem E. et hæred. ſuis quiete de præd. A. et T. et hæred. ſuis in perpetuum, cujus quidem conſiderationis prætextu præd. A. a man. ſua præd. cum pertin. perpetue eſt amotus, in ipſius A. damnum non modicum, et Cur. noſtræ deceptionem manifeſtam ſuper quo præfatus A. vobis ſupplicavit congruum remedium ſibi adhiberi. Nos hujuſmodi colluſionem, malitiam, et deceptionem, tranſire volent. impunit. Vobis mandamus quod audit. querel. ipſius A. in hac parte, et vocat. coram vobis præf. E. et L. L. et aliis in hac parte, quos for. videritis vocand. et auditis hinc et inde partium rationibus, ulterius eid. A. tam ſuper reſtitutione et recuperation. dicti man. quam ſuper colluſione, malitia et deceptione præd. plenam et celerem juſtic. fieri faciatis, prout de jure et ſecundum legem et conſ. regni &c. faciend. Teſte, &c.

And by this Writ it ſeemeth the Juſtices ought to make void the recovery, if they find the Diſceit, &c. yet it ſeemeth they may not ſo do.

If a man be bound in a Statute Merchant, and afterwards maketh a Feoffment of parcel of his Lands unto another

ther man, and of other parcel unto another, and the Recogniſee ſueth execution upon the Statute, and hath Execution againſt one Feoffee, that Feoffee ſhall have an *Audita Querela* againſt the other Feoffee, to ſhew cauſe why he ſhould not have Execution of his Lands, as of the Lands which himſelf hath. 9 H.44.32. E.3. Execut 127. 45 E.3. 51. 16 Eliz. Dy.337.48. E.3.522.& 3 Eliz.Dy. 193.154. Whaleys caſe.

C If a man be bounden in a Statute-Merchant, and certain Indentures of Defeaſance are made of the ſaid Statute, and afterwards the Conuſee doth arreſt the Recogniſor and impriſoneth him, and taketh the defeazance from him, and then ſueth Execution upon the Statute, the Recogniſor ſhall have an *Audita querela* againſt him upon the whole matter.

[104]

A If at the *Niſi prius* in Treſpaſs it be found for the Plaintiff, and damages aſſeſſed, and before the day in Bank the Plaintiff releaſe unto the Defend. all Actions and demands, and afterwards prayeth Judgment, and ſueth Execution thereupon, the Defend. upon that Releaſe ſhall have an *Audita Querela*. 40 Aſſ.23. 44 Aſſ.15. Holt. Br. Audit.Querela.43. 9 H. 5.1. Br. Audit.Quer.16. 36 H.6.24. 22 H.7.23. 3 H. 4. Br. Audita Querela 27 Fitz. Releaſ. 53. Releaſe of all actions is not ſufficient matter to have Audita Quer.

B And the Heir of the Recogniſee may ſue an *Audita Querela*, if he have matter in writing to diſcharge the Execution. 42 E.3.5.15. H.8.5. vi.2. and 3.Eliz. Dy.193.

C If a man be bound in a Statute-Merchant or Staple, and afterwards payeth the money according to the Statute, and hath the Statute delivered unto him, and cancelleth the ſame, and afterwards the Recogniſee forgeth a new Statute in the name of the Recogniſor, the Recogniſor upon the Statute cancelled ſhall have an *Audita Querela*. 43 E.3.38. Finchden.

D If a Statute-Merchant or Staple be made by one unto another, and delivered into the hand of a ſtranger to deliver upon Conditions performed, and the ſtranger doth deliver the Statute before the conditions performed, and the Conuſee ſueth Execution thereupon, the Recogniſor ſhall have an *Audita Querela*. 43 E.3.27. con.12. h.4. 6 Calp.conr.

E If a man ſueth forth an Execution upon a Statute, and hath Execution, and afterwards grant over his Eſtate, the Recogniſor ſhall have an *Audita Querela* againſt the Grantee without naming him who ſued the Execution, if he have matter in writing for to ſue, &c. 12 H.4.15. and 16. Frankford.

F A man may ſue an *Audita Querela* againſt the Recogniſee, becauſe he hath purchaſed a Mannor unto which the Recogniſee is a Villeyn regardant, and yet he may enter and ſeize the Recogniſee without ſuch ſute. 41 E.3.Aud. quer.11.

46 E.3.22. Fulthorp, 17 Ass. 24. Audit. quer. 20. 10 E. 3. 25. Error 71. the Feoffee had Error.

And a ſtranger who made not the Recogniſance, nor was Tenant of the Land at the time of ſuing forth of the Execution, ſhall have an *Audita Querela*, if he have matter of Diſcharge in Writing. *Vi. 11. E.3. Lit. Aſſ.* and there it is ſaid, the ſame is given by the Statute. The Feoffee ſhall not have a Writ of Error &c. Nor the Feoffee of the Conuſee of part of the Lands ſhall not have an *Audita Querela* until his Lands be taken in Execution. G

18 E.3. 36. Audit. quer. 9. the Conuſor muſt ſhew the Stat. otherwiſe he ſhall not have the Plea.

If a man ſueth *Audita Querela* againſt the Conuſee, and ſheweth a Statute cancelled; and ſaith the ſame was deliuered to him in lieu of Acquittance, the Recogniſee may ſhew the true Statute, and ſhew that the Statute ſhewed which was cancelled was a forged Statute & thereupon he ſhall have a Writ unto the Juſtices, in the nature of *Audita Quer.* commanding them that they ſend for the Mayor and the Clark, and for the parties, and hear and determine the Examination of the Mayor and Clark ſhall try and end the matter, *quod vi. Mich. 1. E.4.* H

48 E.3. 20. 12 H.4.4. per Hange ſ. 21 E.3. 15. Bill Audit. Quer. 18. 6 E.7. Eliz. Dy. 232. rule that the Writ doth not lie after he cometh of full age.

Upon a Recovery of a Debt, if he ſue a *Scire facias*, and the Sheriff return *nihil*, by which an Execution is awarded; the Defendant ſhall have *Audita Querela*, if he have a Releaſe or Acquittance, becauſe he was not warned: But if the Sheriff hath returned him warned, he ſhall not have *Audita Querela* upon ſuch Releaſe, &c. becauſe he might have pleaded the ſame upon the return of the *Scire Facias*. I

13 E.3.2.18. E.3.8. 15 E.4.5. Brit. ac. 20. E. 3. Aud quer. 17 20 E.3. Aud. querela 28.

And if an Infant, him himſelf in a Statute Merchant or Staple, he ſhall have an *Audita Querela*, during his Nonage to avoid that Statute, and afterwards he ſhall have an *Audita Querela* after his full age, to avoid that Statute upon that matter in Fact. K

And ſo if a man make a Statute-Merchant or Staple by dureſs, he ſhall have an *Audita Querela* to avoid that Statute by this impriſonment. L

25 H.8 Br. Aud. quer. 39.

If two be ſeverally bounden in two ſeveral Statutes, and afterwards the Recogniſee by deed doth releaſe both the Statutes to one of them, if he ſue Execution againſt them ſeverally they ſhall joyn in *Audita Querela* upon that Releaſe. M

24 E.3 24. Br. Audit. quer 22. 9 H.5. 1.

If the Recogniſor enfeoffe a ſtranger of parcel of the Land and afterwards enfeoffeth the Recogniſee of another parcel of the Lands, and afterwards the Recogniſee ſueth Execution againſt the Recogniſor and the Feoffee, The Feoffee ſhall have an *Audita Querela* againſt the Recogniſee and diſcharge his Lands, becauſe that the Recogniſee hath diſcharged his parcel of Land which he purchaſed by his own Act.

Upon an *Audita Querela* ſued he ſhall have a *Superſedeas* in the ſame Writ to ſtay Execution, &c. But if he be Nonſuit, O

Nonsuit, he may have a new *Audita Querela*, but then he shall not have a *Supersedeas* to stay Execution.

P And a man shall not have an *Audita Querela*, supposing the Recognisee will sue Execution, but it ought to be alledged in the Writ, that he hath *in facto* sued Execution.

Q If a man sue *Audita Querela* upon a Release, and afterwards is Nonsuit, he shall not have an *Audita Querela* upon new matter, *at dicitur*, 43 *E.*3. But it seemeth the Law is otherwise, but he shall not delay Execution by a new *Audita Querela*. 41 E 3. 28. Thorp. 24 E.3. *Audita querela.* 11.

R If a man doth comprehend two matters in the *Audita querela* to extinguish the Execution, yet the Writ is good, but the Plaint. shall hold himself to one matter, and the Defend. shall answer to that. And variance betwixt the *Audita querela*, and the Record shall abate the Writ. But there in a new *Audita querela* sued according to the Record, he shall have a *Supersedeas* to stay Execution, &c. although he had before a *Supersedeas* in the other *Audita querela*, which was abated. 44 E.3.36. 24 E.3. 27. Br. *Audita querela.* 24.

S If a man sue Execution upon a Statute Merchant and hath a *Capias* returned in the Common Pleas, If the Feoffees or parties will sue an *Audita querela*; they ought to sue the same out of the Chancery, directed unto the Justices of the Common Pleas. *Vi.* 22. *H.* 6. 56.

T If a man sue an Execution upon a Statute Merchant as Executor unto another; the party shall not have an *Audita querela*, supposing in the Writ that he who hath such Execution is not Executor. 2 R.3.8. con. If the testator be living. 24 *E.* 3.30. Br. *Audit. querela* 41.

And the process in *Audita querela* is *Venire facias* and *Distringas*, *Alias* and *Pluries Distring.* and if he return *Nihil*, or *Non est inventus*, he shall have a *Capias* against the Defendant. *T.* 18. *E.* 3. 48 *E* 3.1. he shall not have *Capias* but *sicut alias.*

A A man recovereth by default in an Action of Waste, the Defendant sueth an *Audita querela*, directed unto the Justices out of the Chancery, surmising in the Writ, that he was not summoned, nor attached nor distrained; For which the Justices grant out of the Rolls in the Common Pleas, a Writ of Disceit against the *Audita querela* which was but a commandment to the Justices to do right unto the party, &c. *Trin.* 19. *E.* 3. And yet they shall proceed upon the Writ of Disceit, and not upon the *Audita querela*. 12 H. 4.6. and 15.

B If a man be bounden in a Recognizance in the Common Pleas, and afterwards doth release unto the party, and then against his Release sueth Execution; Then he shall there come into the Common Pleas, and shall sue an *Audita querela* thereupon out of the Rolls. And so if one recover in the Common Pleas or Kings Bench, debt or damages, and 22 H.6.56.

afterwards by his deed releaseth the same, and afterwards sueth forth Execution upon the Recovery, the party to whom he released shall have *Audita querela*, out of the Common Pleas or Kings Bench where the Record is, and yet he may have an *Audita querela* out of the Chancery, and so it shall be sometimes Judicial and sometimes Original.

46 E.33. 48 E.3.12. 47 E.3.5. 47 E.3.25.

And if a man be bounden in a Statute Merchant or Staple C unto another man; and afterwards the Recognisee make a defeasance unto the Recognisor; now if the Recognisee sue execution upon the Statute against the form of the Indentures, the Recognisor (or his Executors if he be dead) may have an *Audita querela* against the Recognisee.

And it appeareth in the Register, That a Writ of *Audita* D *querela* lieth for an Infant who hath entred a Statute Merchant or a Statute Staple during his nonage, if he be yet within age.

And another *Audita querela* appeareth in the Register for E the Feoffee, of parcel of the Land which belonged to the Recognisor against the Recognisee, because that the Recognisee hath purchased other parcel of the Lands of the Recognisor &c.

If a man be arrested and imprisoned upon a Statute Mer- F chant, and afterwards the Recognisee doth release unto the Recognisor, or he pay the debt, and hath acquittance, or pay parcel, and hath a release for the residue; Then they may come into the Chancery, and there find surety, body for body to be in the Chancery at a certain day, and there to pay the money, &c. if he cannot discharge himself by acquittance or release, and thereupon he shall have a Writ unto the Sheriff where he is in ward, rehearsing how he hath found sureties in the Chancery, commanding him for to deliver him if he keep him in prison for that cause, and for no other cause, and upon that he may have an *Alias* and a *Pluries* and attachment against the Sheriff if he will not deliver him, &c.

But if a man be arrested and imprisoned upon a Statute Staple, and he hath acquittance or release to discharge himself, then if he will sue an *Audita querela*, or a *Scire facias* to avoid the Execution of that Statute, he ought for to give surety as well to the party, as unto the King in the Chancery, severally in a certain sum, &c. to sue with effect, and to render his body, or pay the money, &c. otherwise he shall not be delivered out of prison: and the same is by force of the Statute of 11 *H.6. cap.*10.

Writ

Writ of Attaint.

G THE Writ of Attaint lieth where falſe Verdict is given in a Court of Record againſt the Plaintiff, or Defendant, or againſt the Demandant or Tenant in a plea real or perſonal ſued by Writ or by Bill, if the debt or damages do exceed 40 *l.* Then he againſt whom the Verdict paſſed ſhall have a Writ of Attaint, and the Writ ſhall be ſuch: if it be in an Action of Treſpaſs in the Kings Bench. vi. 4 Ma. 7. Br. Attaint 127. it lieth not upon an informat. 40 E. 3. 11.

H *Si E. de* L. *fec. tē ſecur. &c. tunc ſummon. &c.* 24. *legal. militesde viſn. de* N. *quod ſint coram nobis apud* B. *in octabis* S. Hill. *parati ſacrament. recognoſc. ſi jurator. per quos quædam inquiſitio nuper capta fuit coram nobis apud* B. *per breve noſtrum inter* L. *et* M. *ux. ejus et præd.* S. *de quadam tranſgreſſione eidem* M. *per præf.* K. *illata, ut dicit' falſum fec. ſacram. ſicut idem* S. *nobis gravit. conquerend. monſtrav', et interim diligen. inquiras, qui fuer. juratores primæ inquiſitionis, &c. et eos tunc habeas coram præf. juſtic. &c. vel coram nobis, &c.* as the caſe is and lieth.

I And by the Statute of *Weſt.* 1. *cap.* 38. a man ſhall have an Attaint in Plea of Land of Freehold, of a thing which toucheth the Freehold.

K And by the Stat. of 1 *E.* 3. *cap.* 6. a man ſhall have Attaint in Treſpaſs.

L And by the Stat. of 5 *E.* 3. *cap.* 6. in the end of the Statute a man ſhall have Attaint of Treſpaſs ſued by Bill without Writ before Juſtices of Record, if the damages exceed forty *l.* 14 H. 7. 14. Brian.

M And alſo a man ſhall have Attaint for the damages, although they be not paid, &c. 14 H. 7. 14. Fineux.

N And if falſe Verdict paſs by Writ of *Niſi prius*, then the form of the Writ is:

Parati ſacramento recognoſc. ſi jurat. per quos quædam inquiſitio nuper ſummon. fuit coram nobis, et capta coram dilect. et fidel. noſtr. T. de B. *uno juſtic. noſtr' ad placit. coram nobis tenenda aſſign. per breve noſtrum de Niſi prius apud.* K. *inter ipſum* E. *et præf. T. de quadam tranſgr. &c.*

O And if the Verdict be taken within any Liberty or Corporate Town, then the Writ of Attaint is ſuch: 44 E. 3. 21. 44 Aſſ. Br. Attaint 131.

Parati ſacramento recognoſc. ſi juratores per quos quædam inquiſitio nuper ſum. fuit, et capta apud L. *ſine brevi noſtro coram Majore et Ball. Civitat. noſtræ* Lincoln. *de loquela quæ fuit coram dilectis et fidel. noſtris* S. Scrop *et ſociis ſuis juſtic. noſtris ad placita coram nobis tenend. aſſign. inter* L. *de* L. *at præf.* S. *de quadam tranſgr. eidem* L. *per præf.* S. *illatum, ut dicitur, quæ quidem loquela juxta libertates civitatis civibus civitat. noſtræ præd. per char-*

tas

tas progenitorum noſtrorum quondam regum Angl. *& confirmat. noſtram conceſſas, coram eiſdem Majore & Ball. noſtri retorn. fuit placitum, falſum fecer. ſacramentum, ſicut idem I. nobis graviter conquerendo monſtravit necnec, & interim, &c.*

And upon falſe verdict given in *London* upon *Niſi prius* the form of the Writ is ſuch : A

Parati ſacramento recogn. ſi jurat. per quos quædam inquiſitio nuper ſum. fuit coram nobis, et capt. coram R. *de* M. *tunc uno juſtic. ad placita cor. nobis tenend. aſſign. aſſociato ſibi* A. *de* F. *apud* S. Martin. Lond. *juxta libertat. civitatis præd. per breve noſtr. &c.*

If falſe verdict be given in a Corporate Town, upon a plaint without Writ, then it is ſuch :

Parati ſacramento recogn. ſi jurat. per quos quædam inquiſitio nuper capta fuit coram nobis apud Linc. *ſine brevi noſtro inter* A. *de* D. *de quadam tranſgreſſione*, &c. *illata, de qua quidem tranſgreſſione idem* B. *convict. fuit, &* 20 *l. eidem* A. *pro damnis ſuis in hac parte adjudicat. exiſtunt ut dicit. falſum fecer. ſacrament. ſicut idem* A. *&c.*

And if falſe verdict be given within the verge, then the C Writ ſhall be ſuch :

Parati ſacramento recogn. ſi jurat. per quos quædam inquiſitio nuper capta fuit coram Senelc. & Mareſc. hoſpitii noſtri apud C. *ſine brevi noſtro inter* K. *& prædict.* T. *de quadam tranſgreſſione eidem* R. *per præf.* T. *apud* C. *infra virgam noſtram ut dicebat. illata, falſum fecer. ſacramentum, &c.*

And if a man be condemned by falſe verdict in debt, or D damages, then if he ſue an attaint, he ſhall have a ſpecial Writ unto the Juſtices, to bail him upon ſureties taken, that if the attaint paſs againſt him, he render himſelf to priſon, or ſatisfie the debt, and the Writ is ſuch :

Rex dilect. &c. E. de S. et ſociis ſuis ſalut'. Cum Larrain *venerit cor. nobis per breve noſtr. quandam jurat. 24. ad convincend. juratores per quos quædam inquiſitio nuper capta fuit cor. nobis apud W. per breve noſtr. inter* R. *& præd.* T. *de quadam tranſgr. &c. illat. ut dicit. ac ex parte ipſius* Laccepim. *quod ipſe prætextu proceſſus in præd. placito de tranſgr. facti. captus eſt, & in priſona Mareſcalciæ noſtræ cor. nobis detentus, quo minus jurat. ſuam præd. proſequi poſſit ſuper quo, &c. adhiberi, Nos volentes quod idem I. in priſona noſtra præd. ſic detinetur. quo minus jurat. ſuam præd. proſeq. valeat, ut debebit : Vobis mandamus, quod idem* I. *invenerit cor. vobis ſuffic. manucapt. qui eum manucapiant habere cor. nobis ad proſequend. attinctam præd. et terminata attincta illa, ſi cont. ipſum tranſierit, vel ipſe attinctam illam non fuerit proſecutus, quod reddat ſe priſonæ noſtræ prædict. & ſatisf. tam nobis de eo quod ad nos, quam præf.* R. *de eo quod ad ipſum per-*

tinet

tinet in præmiſſis, & ulterius faciat & recipiat quod Curia conſideraverit in hac parte, tunc ipſum I. à priſona noſtra prædict. deliberari fac. per manucapt. hujuſmodi, ad proſequendum attinct. ſuprad.

E And if a man vouch in a *Præcipe quod reddat* one who entreth into the Warranty and pleadeth, and loſeth by falſe Verdict, he ſhall have an attaint, and the Writ ſhall make mention of the voucher; And ſo if a man pray to be received for default of Tenant for life, and is received and pleadeth, and loſeth by falſe Verdict, he ſhall have a Writ of attaint, and the VVrit ſhall mention the receipt.

And ſo if it paſs againſt the Plaintiff by falſe Verdict, and he bring an attaint, the VVrit ſhall make mention of the Voucher, and of the Receipt; and ſo if he in the reverſion joyn with the Tenant for life by Aid prayer, and they loſe, by which he in the reverſion brings an attaint, he ſhall make mention in the Writ of the Aid prayer, and alſo in Aſſiſe, if it be diſcontinued and afterwards reattachment ſued, and he loſeth by falſe Verdict, the Writ of attaint ſhall make mention of the re-attachment, becauſe he reviveth the Original of Aſſiſe.

But if the Defendant in a VVrit of Detinue pray garniſhment, who cometh and pleads, and the Plaintiff loſeth, by which he bringeth attaint againſt the Garniſhee, the VVrit of attaint ſhall make mention of the Garniſhment, That is well debated *M.9.H.6.* in the title Attaint in the Abridgments.

But, ſaving the opinion of the Book, it ſeemeth the VVrit of attaint ſhall make mention of the Garniſhment, &c. for the Defendant in a VVrit of Detinue who ſueth the Garniſhment, is in manner out of Court; and when the Garniſhee comes, the Plaintiff counteth upon his original VVrit, which is the VVrit of Detinue, and the Garniſhee ſhall anſwer to that Count; and the VVrit of Garniſhment is but for to make him come in and anſwer to the Plaintiff to his original and Count, and when he comes and pleads, he pleads unto the Plaintiffs Count, which is upon the Original by which the plea which is between the Plaintiff and the Garniſhee is upon the Original plea, as it ſeemeth, *tamen quære.*

And if a man plead a deed in bar, in which there are witneſſes, and the deed is denied, for which proceſs is awarded againſt the witneſſes, which joyn with the Jury, and it is found the Plaint. deed, Now he ſhall not have an attaint, &c. becauſe the witneſſes do affirm the Verdict by their teſtimonies. But if it be found not his deed, then the other party ſhall have an attaint, for the witneſſes cannot prove a negative, but of the affirmative they may have notice whether it be his deed or not

[107]

A

1 H.4.4. 11 H.4.51. Stven. 34 H. 6.31. 11 H.4.50. *Gaſcoigne.* 17 E.2. recovery in value 32.9 H. 6.38. Yet he ſhall not mention if the Tenant for life be dead. 4 *Aſſ.* 7. 4 E.3.54. Br. Attaint 49.

9 H.6.31.

11 *Aſſ.* 19. Br. Attaint 57.23. *Aſſ.* 11. Challenge 132. Thorp. 11 E.3. Attaint 168.

A man ſhall have an attaint in ſpecial Caſe, where every word of the Verdict is true, as if a man hath had common appendant unto his Land, time out of mind, and he bring an Aſſiſe of the common, and makes title that he hath had common, time out of mind, &c. without ſpeaking of the Appendancy, and it is found for him; the Defendant ſhall have an attaint, for the Plaintiffs title is for common in groſs, and not common appendant; and yet the words of the Verdict are true, that he hath had common time out of mind, &c. but not in ſuch manner as ſhall be taken by the title.

10 E.4.17. ac. Co. 391. 392.

And ſo if a man have a Rent as Forreſter in fee of ſuch a Forreſt time out of mind, and in Aſſiſe of that Rent he make title thereunto, that he hath had a Rent out of that Land time out of mind, &c. without ſaying as Forreſter in fee, &c. and it be found for him, the other party ſhall have an attaint upon that Verdict, although the words of the Verdict be true, for he hath not had ſuch Rent by preſcription as ſhall be intended and taken by his Title. A

10 E.4.17. 24 H.8.Br. Attaint 96.

If a man recover outragious damages by Verdict, but he releaſeth parcel of the damages before Judgment, and hath Judgment for the reſidue, the Defendant ſhall not have an attaint for thoſe damages which are releaſed. B

35 H.6.30. 22 E.4,5. 13 E.4,2. 14 H.7.5.

And in a Writ of Waſt the Plaintiff ſhall have a Writ to enquire of the Waſt, who if they give falſe verdict by which the Plaintiff recovereth, the Defendant ſhall have an attaint *per Curiam, M.2.H.4.* But I do not ſee how the ſame can be warranted by any Statute, which giveth the attaint, becauſe the Writ of Enquiry is awarded by the Court *ex officio per Sacramentum proborum*, &c. And the Sheriff may make the enquiry by the Oaths of ſix or eight perſons of the Waſt, and he is not bound to take twelve perſons. *Quære* of this. C

9 H.6.2. 3 H.6.29. *Martin ac.* 48 E.3.19. *cont.* 33 H.6. 25. 2 H.4.2. *per Curiam*, ſo of Error 18 H.8.1. 21 H.6.56. ac H.8.3.10.

38 E.3.12. and 27 Br. Colluſion 18. upon Writ of enquiry of Waſt for ab Abbot *Quale jus* ſhall iſſue, which proves it is no Verdict but an Enquiry.

The King ſhall have an attaint upon a falſe verdict paſſed againſt him, as well as a common perſon. D

42 E.3.26. 34 H.6.32. ac.

In treſpaſs againſt two, one cometh and pleadeth Not guilty, and is found guilty, and afterwards the other cometh and pleadeth Not guilty, and is found guilty by another Enqueſt; Now in this caſe the firſt Jury ſhall aſſeſs all the damages for the Treſpaſs, and that the Defendant in the laſt Enqueſt ſhall have an attaint of the damages aſſeſſed by the firſt Enqueſt if they be outragious or exceſſive, &c. E

12 H.4.5. In waſt againſt two, one made default, and the other pleaded, he who made default ſhall not have Attaint. 43 E.3.36. 34 H.6. 12. *Marle cont.* 39 H.6.1. ac. 8 H.4.23. Terms.

Tenant

F Tenant by Statute Merchant shall have an attaint if he be barred in Assize by false verdict, or found against him by false verdict, where he is Defendant in the Assize. 21 *Ass.* 16. Br. Attaint 64.

G If a man recover in a *Præipe quod reddat* against a Tenant by false verdict, there have been divers opinions whether the Tenant shall have an attaint before Execution sued out against him. *Vi.* 41. *E.* 3. *Lib. Ass.* 21. *h.* 6. 60. But the Statute of 1 *E.* 3. saith, That a man shall have an attaint of damages before Execution sued of them, before which Statute it seemeth he could not have attaint of them. But in the time of *E.* 1. the Defendant sued forth an attaint for damages upon false verdict given against him in a Writ of Trespass before the Plaintiff sued Execution of the damages, which see in title Attaint in the Abridgments, *temp. E.* 1, And also by the same reason, if a man do recover Land, the Tenant shall not have attaint before Execution. And *Nontenure* hath been pleaded, and admitted a good plea divers times in an attaint. And on the other side if the Tenant shall not have an attaint before Execution sued, or entry made by the demandant or his heir, then perhaps they will not enter until the Jurors are dead, and then the Tenant shall be without remedy by attaint. 16 H. 6. 13. *ac.* in personal Actions. 21 H. 6. 34. 34 H. 6. 13. 26 H. 8. 2. 21 H. 6. 12. 35 H. 6. 39. 22 E. 3. 10. Br. Attaint 32.

H If a man who was Tenant do recover in attaint, the Judgment shall be that he shall be arrested, &c. which could not be if the Demandant hath not entred, and when he himself is Tenant in possession. 5 *Ass.* 14. 8. 34. Br. Attaint 48. 6. *Ass.* lib. Br. 32.

I And I think it the better opinion, That if in Trespass the Defendant plead villainage in the Plaintiff, &c. and he is found frank unto his damages of 20 *s.* the Defendant shall not have an attaint for the smallness of the damages, &c. But in a *Præcipe quod reddat*, if the Tenant plead *Non-tenure*, and it be found against him, he shall have an attaint, &c. 14 *Ass.* 2. Br. Attaint. 59.

K An Attaint shall be maintainable against the Terre-Tenant without naming him who was party to the Record: Otherwise it is in a Writ of *Recordare*: for that shall be sued against him who was party, or his Heir or Executor, if it be a personal Action, otherwise it shall abate. 10 F. 4, 13. 8 h. 4. 18. 9 H. 6. 47. 14 H. 6. 36. 35 H. 6. 30.

L Attaint doth not lie upon false Verdict given in an Appeal of Maihem, or Appeal of Felony or Murder. contr. is admitted. 34 H. 6. 36.

M An Attaint may be sued in the Common Pleas, if the Record be there; or it may be sued in the Kings Bench upon a false Verdict given in the Common Pleas, if the Record be removed into the Kings Bench. 35 H. 6. 30. the contr. is admitted. 8 Eliz. Dy. 250.

N A Recovery was in an Assise brought in the Kings Bench, and afterwards that Record was sent unto the Common Pleas, and 16 Ass. 9. Br. Attaint 60.

44 E.3.2. 44 Ass.20. 21 E.3.10. Br.Art.32. 21 E.3.3. Ibid.32. H.15.h.3. 21 E.Dy. 364.

and the party ſued an Attaint upon the Record in the Common Pleas. *Vi.*3.E.2.*H. Aſſiſe. Iter Kan.*

Attaint was ſued upon a falſe Verdict given againſt the Defendant when he claimed liberty, and adjudged that he ſhould have it. *H.*15.*h.*3.

And the Writ of Attaint may be ſued out of the Common Pleas or Kings Bench, upon a falſe Verdict given in the ſame Court, as well as out of the Chancery, *qd. vi.* 30. *E.* 1. *Itin. Cornub.* C

In a Writ of Entry brought in *Suſſex*, the Defendant pleaded a Releaſe in *London*, which was found againſt him in *London*, for which he brought an Attaint in *London*, and it was maintainable, *qd.vi M.*18.*E.*1. P

If the King recover by falſe Verdict, he ſhall have Attaint againſt the *Petit* Jury only, as if the King do recover by erronious proceſs, &c. the party ſhall have a Writ of Error of the Judgment, and ſhall not name the King, becauſe he is always preſent in the Court. Q

8 H.44. 36 E.3. Error 72. 20 E.3. Error 2. 21 H.6.29.

The Vouchee or Tenant by Reſceit, or he in the Reverſion where he joyneth to the Tenant by Aid prier, ſhall have attaint if he loſe by falſe Verdict: and if Tenant for life loſe by falſe Judgment, he in the Reverſion ſhall have an attaint or Writ of Error living the Tenant for life, by the Statute of 9 *R.*2.*cap.*3. A

If the Defendant in Treſpaſs, plead Villenage in the Plaintiff, and he ſaith that he is Frank, and is ſo found by Verdict, and afterwards the Defendant dieth, his Heir ſhall have an attaint to avoid this Eſtoppel and falſe Verdict, although it was given in a perſonal action. B

8 H.4.13. Skyne.

In an attaint upon a recovery in *Præcipe quod reddat*, the Defendant pleads Nontenure, and the Demandant ſaith, That he made a Feofment unto unknown perſons, &c. and that he brought the Action within the year, and with that that he will aver that the Defendants took the profits the day of the Writ purchaſed; and the Defendant ſaith, That he did not take the profits, &c. Now this iſſue ſhall be tried by the attaint; and if they give falſe Oaths, he ſhall have an attaint upon that Verdict by *Newton*, as if in a Writ of Right the Tenant plead a Collateral warranty, made within the ſame County, it ſhall be tried by the Grand Aſſiſe; and if they give falſe Verdict, he ſhall have an attaint, becauſe the ſame is out of the point of Aſſiſe by *Newton, Tr*, 21.*h.*6. C

21 H.6.55. 22 E.3.10. Br. Attaint 32. A. ſhall be tried by twelve, and not by the Attaint. 29 Aſſ. 13. br. Attaint 63. 32 Aſſ. 23 Br. Attaint 75.

Nonſuit in attaint after appearance is peremptory, and he ſhall not have a new attaint, and ſo upon a *Retraxit*, if the Demandant ſay he will no more ſue his attaint, and D

that

that he entred upon Record, he ſhall not after have another attaint.

E If a man have a *Precipe quod reddat* againſt divers, by ſeveral *Precipe's*, and by Enqueſt it is found for the Demandant, he ſhall have a Writ of Attaint againſt the Tenant, &c. But if it is found againſt the Tenants, he ſhall have ſeveral attaints; for as unto all of them, it is as a ſeveral Enqueſt to try their iſſues ſeverally. 14 Aſſ. 2. Br. Attaint 59.

F If the Demandant be barred in a *Formedon* and afterwards releaſeth all actions or all his right in the Land, yet his Heir ſhall have a Writ of attaint.

G And ſo if the Father be Nonſuit upon an attaint upon a VWrit of *Formedon*, he there ſhall have an attaint.

H And a man ſhall have an attaint before Juſtices of Oyer without original VWrit, upon a Bill only filed before the ſame Juſtices, *T. 5. E. 2.*

I If falſe Verdict be given in Aſſize of Novel diſſ. then if the Plaintiff will ſue an attaint, he ought to have ſuch a VWrit:

Rex vic. Lincoln. ſalutem. Si A. fecerit te ſecurum tunc ſum. &c. 24. milites de vſn. de S. quod ſint coram Juſticiar. noſtris ad primam Aſſiſam, cum in partes illas venerint. Vel ſic, coram dilectis et fidelibus noſtris R. de W. et B. de F. et his quos ſibi aſſociaverimus de certis, &c. quos idem R. et B. tibi ſcire fac. parati ſacramento recogn. ſi Linſolte et ſins judicio diſſeiſirent præfat. A. de libero tenemento ſuo in S. vel de communia paſturæ ſuæ in S. quæ pertinet ad liberum tenementum ſuum in eadem villa poſt primam tranſlationem Domini H. filii Regis I. in Vaſcon. unde idem A. queritur quod juratores Aſſ. de Nerue diſſ. quæ inter eos ſum. fuit et capta coram nobis apud W. per breve noſtrum, vel coram præfat. R. et B. vel coram dilect. et fidelibus noſtris W. de H. et ſociis ſuis juſticiar. noſtris ultim. itinerant. apud L. in com. tuo per breve noſtrum falſum fecer. ſacramentum, et interim diligenter inquiras, qui fuer. jurator. illius aſſ. et eos tunc habeas coram præf. juſtic. ad præfat. aſſ. vel coram R. et B. Et ſum. &c. prædict. vel ſic: prædict. I. H. qui prædict. tenementa nunc tenet: quod tunc ſit ibi auditur. illam recognitionem, et habeas ibi nomina Militum, et hoc breve.

K And if a man loſe by falſe Verdict in Aſſiſe before Juſtices of Aſſize, if he will ſue an attaint before the ſame Juſtices, he ought to ſue a Patent directed unto the ſame Juſtices to give them authority to hold Plea thereof; or he may ſue a Patent unto other Juſtices to hold Plea of that Writ of attaint, and the form of the Patent is ſuch:

L *Rex dilectis et fidelibus ſuis R. et B. ſalutem. Sciatis quod conſtituimus vos, &c. Juſtic. noſtros, una cum his, quos vobis*

vobis associavimus ad jurat. xxiv. Milit. capiend. quam A. arrain. coram vobis per breve nostrum versus L. ad convincend. jurator. in Assisa novæ disseisin. quæ inter eos summ. fuit, et capta coram vobis apud W. per breve nostrum de tenementis in S. vel de communi pastur. in S. vel sic: coram vobis præfat. R. et dilecto & fideli nostro S. nuper Justic. nostro, &c. apud W. per breve nostrum de tenementis in S. et ideo vobis mandamus, quod ad certos, &c. provideritis, jurat. illam capiatis, & fac. inde quod ad justitiam pertinet secundum legem et consuetudinem regni nostri: Salvis nobis amerciamentis inde provenient. Mandamus enim Vic. nostro Lincoln. quod ad certos diem et locum, quos ei scire fac. jurat. illam coram vobis venire fac. in cujus rei testimonium has literas nostras fieri fecimus patentes. Teste, &c.

And a man shall have a Writ of Attaint upon a false Verdict in an Assise of Nusance. *Quare levavit vel prostravit quoddam stagnum in N. &c. vel quoddam fossatum, vel quandam sepem, vel divertit cursum aquæ in N. ad nocumentum, &c. in eadem villa.* And the form of the Writ is such:

[109] *Si A. &c. tunc sum. &c. parati sacramento recognoscere, si L. injuste et sine judicio levavit, vel prostravit quoddam stagnum in N. vel quoddam fossatum, vel quandam sepem, vel divertit cursum cujusdam aquæ in N. vel arctavit, vel obstruxit quandam viam in N. ad nocumentum, &c. in eadem villa, post primam, &c. unde idem A. queritur, quod juratores ass. quæ inter eos summ. fuit et capta coram, &c. apud N. per breve nostrum falsum, &c. et interim &c. et sum. &c. Et habeas &c.*

And it is a Rule in the Register, That in an Attaint upon an Assize of Novel diss. a certain day shall be set, as in an Assize, *Die lunæ vel alio die in Crastin. vel in Octab. vel in quinden. Pasch.* but it behoveth that the Tenant have Garnish out by 15 days in the Attaint, for the Statute doth not give lesser time, but only in Assize before the King.

And there is another form of the Writ, if the Assize be adjourned into the Common Pleas, and taken there before the Justices of the Common Pleas, and the same appeareth in the Register.

And another form is of the Writ of Attaint, where the Assize is brought against the husband and wife, and the wife is received for the default of the Husband, and pleadeth and loseth by false Verdict.

And another form of attaint is, where the Tenant in the Assize pleadeth the Release of the Plaintiff, or of his ancestor in bar of the Assize which is found against them, upon a false Verdict.

And another Form of the Writ of attaint is, where the

the Verdict passeth by *Nisi prius* out of the Common Pleas.

F And another Form of the Writ of attaint is, where the Assize is summoned before certain Justices, and after it is taken before other Justices by a general Commission, and a false Verdict is given upon the same.

G And another form of the Writ is, If an Assize be summoned before divers Justices, and afterwards is taken by any of them by vertue of the Writ of *Si non omnes*, then the Party shall have a Writ of attaint, rehearsing the whole matter.

H And if a man upon Verdict given in an Assize before the Justices of Assise sueth an attaint before the same Justices, or other Justices, he may have a Writ of association directed unto the same Justices before whom the attaint is laid: and the Writ of *Si non omnes*, as he shall have in Assize, &c. who was Plaintiff there: And he shall have a Writ Patent directed unto him who is associate, &c. Which Writs do appear in the Register after the Writs of Assize of Novel disseisin.

But it appeareth by one Writ in the Register, that there was a Constitution made, which required, That the Assize and Juros and certificate shall be taken before the Justices commonly assigned: By which it seemeth, That a man shall not have an Attaint upon a false Verdict given in an Assize, but before the Justices of Assize, or before the Justices of the Common Pleas, if the Record be removed thither, or before the Justices of the Kings Bench, if the Record be removed before the King; and the form of the Writ is such:

21 E 3. 3. Br. Attaint 31. 21 Ass. 3. Br. Certificat de Assis 3. 21 E. 3. 10. Br. Att. 32. 20 H. 6. 4. No Attaint upon Tender made, but [illegible]

Rex dilect. et fidel. suus F. & G. *de* E. *salutem. Licet nuper constituerimus vos Justic. nostros ad jurat. viginti et quatuor Mil. capiend. quam* L. *quæ fuit ux.* E. *arrain. coram vobis per brev. nostr. versus* E. *que fuit ux.* A. *de* L. *ad convincend. jurator. Ass. inde, &c. quæ inter ipsum* A. *et præf.* L. *alios, &c. sum fuit et capt. apud* L. *coram dilectis et fidelibus nostr.* R. *et* B. *nup. Justic. nostris apud Ass. &c. assign. per brev. nostr. de tenement. in* S. *Quia ea constitut. præd. facta fuit coram form. statuti nostri apud Northampt. nuper edit. in quo continetur, quod Assisæ jurat. et certificationes coram Justic. communiter assignat. non aliis capiantur: Quod quidem statut. in omnibus et singulis suis articulis volumus inviolabiliter observari. Vobis mandamus, quod de captione jurat. præd. prætextu commissionis nostræ sit facta vos nullatenus intromittatis. Teste, &c. Quod quidem statut. factum fuit anno 2 Ed. 3. Regis Angl. cap. 2.*

By which it appeareth, That he shall not have a Writ of attaint by Commission, &c. before other Justices, but only before Justices of Assise, or of the Common Pleas, or Kings Bench, as before is said.

I The form of the Writ of Attaint upon a Rediss. is such:

Rex Vic' &c. Si R. fecerit, &c. tunc ſum. &c. 24. legal. Milites &c. uſque ibi parati, &c. Si juratores per quos quaedam inquiſitio capta fuit coram E. tunc Vic. com. tui, et cuſtod. placitorum coronæ noſtr. ejuſdem per breve noſtrum apud W. inter R. et præd. B. de quadam rediſſ. eidem R. per præf. B. facti ut dicit. de uno meſuagio, et 9 acr. terræ cum pertin. in W. falſum fecerint ſacramentum ſicut idem R. nobis gravit. querend. monſtravit, et interim diligenter inquiras, qui fuerint juratores illius inquiſitionis, &c. et eos tunc habeas coram præf. R. et L. Et ſum. præd. B. quod tunc ſit ibi ad audiend. ill. recogn. et habeas ibi ſum. &c.

Vi. 8 Eliz. Dy. 25.

And it ſeemeth, That this Writ of Attaint ought to be ſued before the Juſtices of Aſſize of the ſaid County, and that they ſhall have a Patent for the ſame directed unto them, and that the Record ſhall be brought before them. But if the Record be removed into the Common Pleas, then it ſeemeth he ſhall have his attaint there.

And it appeareth by *Glanvile*, That a man ſhall have an attaint, and the manner how the Jurors ſhall be puniſhed. K

42 E. 3. 25. 2 H. 4. 23. Gaſ 45ae.

And if any Jurors be convict of falſe Oath, they ſhall be impriſoned, and then they ought to ſue unto the King to pay a fine for their impriſonment, and when they are agreed with the King they may ſue a Writ for to remove the Record before the King in the Kings Bench, and the Writ ſhall be ſuch: L

By this appeareth that they ſhall not forfeit their Lands in Fee, as upon Premunire, but for their own lives by Br. Attaint 100, & 95. upon the book of 22 E. 4. 1.

Rex dilectis E. et ſociis ſuis, &c. ſalutem. Cum W. de M. et alii de falſo ſacramento per ipſos facto in quadam inquiſitione capta apud W. coram W. de B. et ſociis ſuis nuper Juſtic. Dom. Regis, &c. de Banco per breve noſtrum inter R. petent. et W. de M. tenent. de manerio de B. cum pertin. excepto uno gardino in eodem maner. coram dilectis et fidelibus noſtris W. de B. et

[110] *ſociis ſuis, &c. de banco, per quandam juratam 24. convicti fuiſſent, et ea occaſione priſonæ noſtr. de Fleet adjudicat. ac bona et catalla ſua, terr. et tenementa ſua in manu noſtra ſeiſita, Nos record. et proceſſum negotii prædict. omnibus ea tangent. una cum corporibus præd' W. et aliorum coram nobis certis de cauſſ venire facimus, ac jam ex parte ipſius W. nobis eſt ſupplicat. ac cum ipſe in priſona hujuſmodi occaſione præmiſſorum jam diu detentus fuiſſet et adhuc exiſtit, velimus ab eo rationabil. finem pro impriſonamento ille, bonis et catall. ac terris et tenementis ſuis præd' ac etiam pro eſtreamento terrarum et tenementorum prædict. recipere, ipſum a priſona, qua ſic detinetur facer. liberari. Nos ſtatui ejus compatientes in hac parte, ac volentes eidem W.*

gratiam

gravium facere possint. Vobis mandamus, quod visis recordo et processu prædictis et habita consideratione ad vulorem bonorum et catallorum et tenementorum prædictorum ac estrepamenti eorundem rationabilem finem de eisdem W. pro eo quod ad nos pertinet in hac parte recipiatis et ipsum W. à prisona, ubi præmissa occasione detinetur deliberari, et si bona et catalla sua et tenementa sua in manum nostram existentia sic liberati fuerint per finem suprædict. Teste, &c.

And thereupon the party shall be fined, as the Justices of the Kings Bench will assess in their discretion; and upon that they shall grant a Writ to deliver his goods and his Lands, and for to deliver him out of prison, and the Writ shall be such: 43 E. 3. 16. See Statutes 3 H. 8. ca. 15.

Rex Vic', &c. Cum W. de M. nuper juratus in quadam inquisitione capta apud W. coram W. de B. et sociis suis Justic. nostr. Regis, &c. (ut supra, usque ibi) Justic. nostris de banco per errores nostros de falso sacramento per ipsum W. facti per juratam 24. Milit. convict. fuisset, et ea occasione prisonæ nostr. adjudicat. bona et catalla, necnon terr. et tenementa sua in manus nostras seisita sunt, nobis constat per inspectionem record. et processus prædict. quæ coram nobis venire fecimus, ac idem W. postmodum convictus fuisset in Curia nostra coram nobis, et finem fecit nobiscum pro imprisonamento prædicto, et terris et tenementis suis habendis: Nos præcipimus, quod omnia terras et tenementa ipsius W. sua occasione et non alia in manus nostras existent. eidem W. sine dilatione rehabere fac. et de corpore ipsius W. capiend. occasione prædicta omnino supersedeas. Proviso tamen quod de valore terrarum et tenementorum prædictorum à tempore judicii super eum inde facti usque ad datum istius brevis, et etiam de estrepamento eorundem cum inde inquisitum fuerit, nobis respondeat. Teste W. Thorpe, &c. Anno 6. Rotulo 194.

A And there are divers other manner of forms of Writs of Attaint, which are not here mentioned, because a man may see them in the Register.

Writ of Oyer and Terminer.

B THe Writ of Oyer and Terminer should not be properly called a Writ, But it is a Commission directed unto certain persons, when a great assembly, insurrection or a hainous misdemeanor or Trespass is committed and done in any place. Then the manner and usage is to make such a Commission of Oyer and Terminer, or hear and determine such misbehaviour; and the Statute made 2 *E. 3. cap.* 2. requireth That no Commission *de Oyer* and *Terminer* be granted but before the Justices of one Bench or other, or the Justices Itinerants,

and that for horrible Treſpaſſes; and it is of the Kings ſpecial grace, according unto the form of the Statute thereof made in the time of the Grandfather of the ſaid K. *Edward*; and the form of the Commiſſion is ſuch:

Rex dilect. & fidel. ſuis A. B. & C. *ſalut. Ex gravi querela* D. *accepimus, quod* E. F. & G. *ac quidam alii malefactores & pacis noſtræ perturbatores in ipſum* D. *apud* N. *vi & armis inſultum fecerunt, & ipſum verberaverunt, &c. ita quod de vita ejus deſperabatur, & alia enormia ei intulerunt, ad grave damnum ipſius* D. *& contra pacem noſtram. Et quia tranſgreſſion. ſi aliter perpetrata fuerit, relinquere nolumus impunitam: Aſſignavimus vos & duos veſtrum juſtic. noſtros ad inquirend. per ſacramentum proborum & legalium hominum de Com.* Lincoln. *per quos rei veritas melius ſciri poterit, de nominibus malefact. prædict. qui una cum præf.* E. F. & G. *tranſgreſſ. illam perpetrar. & de tranſgreſſ. prædict. plenius veritatem, et ad eandem tranſgreſſ. audiendum et terminandum ſecundum legem & conſ. regni noſtri. Et ideo vobis mandamus quod ad certos dies et loca, quod vos vel duo veſtrum ad hoc provideritis, inquiſitionem illam faciatis, & tranſgreſſ. illam audiatis et terminetis in forma prædict. quod ad juſtitiam pertinet ſecundum legem et conſ. regni noſtri: ſalvis nobis amerciamentis: & aliis ad nos inde ſpectant. Mandamus enim vic. noſtro com. prædict. quod ad certos dies et loca, quæ vos vel duo veſtrum ei ſciri fac. venire faciat coram vobis vel duob. veſtrum, tot & tales probos et legales homines de bal. tua, per quos rei veritas in præmiſſis melius ſciri poterit & inquiri. In cujus rei teſtimonium, &c.*

[111] And the Rule in the Regiſter is, That if this clauſe, *Ac quid. alii malefactor'*, &c. be not put into the Commiſſion aforeſaid, then in the end ſhall be this clauſe, *Per quos rei veritas melius ſciri poterit, de tranſgr. prædict. plenius veritatem ad eandem tranſgreſſionem, &c.*

And the forms of the Writ which ſhall be directed unto A the Sheriff upon that Commiſſion is ſuch:

Rex Vic', &c. Ex gravi querela D. &c. (ut ſupra, uſque ibi) *aſſignavimus dilect', &c.* A. B. & C. *et duos eorum juſtic. noſtr', ad inquirendum per ſacramentum proborum & legal. hominum, &c.* (uſque ibi) *audiendum & terminandum ſecundum legem et conſ. regni noſtri. Et ideo tibi præcip. quod ad certos dies & loca, quos ijdem* A. B. & C. *tibi ſcire fac. venire facias coram eis vel duobus eorum, tot et tales probos et lega. homines de ballivo tua, per quos rei veritas in præmiſ. melius ſciri poterit & inquiri, et habeas ibi hoc breve, &c.*

And the King may make a Writ of Aſſociation unto the B Juſtices of *Oyer* and *Term.* to admit them into their Company whom

whom the K. hath associated unto them, and the form is such:

Rex dilectis A.B. & C. Sciatis quod cum nuper ad querimoniam Nobis suggerent. quod E. F. et G. ac quidam alii malefact. & pacis nostr. perturbatores, &c. (usque, &c.) impunitam; Assignamus vos et duos vestrum Justic. nostros, &c. (usque) ad audiendum et terminandum secundum legem et cons. Assignavimus vobis vel duobus vestrum faciendum. Ita tamen quod si ad certos dies et loca quos vos vel duo vestrum ad hoc provideritis, ipsum H. adesse contigerit, tunc ipsum ad hoc in socium admittat. in formam præd'. Mandamus enim eidem H. quod una vobiscum, vel duobus vestrum ad hoc intendat sicut præd' est. Teste, &c.

And the form of the Writ of Association, which shall be directed unto him who shall be associate unto the Commissioners is such:

Rex dilecto et fideli suo H. salutem. Sciatis quod cum nuper ad querimoniam D. nobis suggerentis, quod E. F. et G. ac quidam alii malefactores &c. assignavimus dilect. &c. A. B. et C. et duos eorum Justic. nostros, ad inquirendum, &c. (ut in patent. usq; ibi) *terminandum secundum legem, &c. Associavimus vos præf. A.B. et C. et duobus eorum ad præmiss. una cum eis vel duobus eorum faciendum; ita tamen quod si ad certos dies et loca quos iidem A.B. et C. vel duo eorum ad hoc provideriut, vos adesse contiger. tunc vos ad hoc in socium admittant, aliosquin A. B. et C. vel duo eorum (non expectato præsentia vestr.) ad præmiss. faciendum procedant. Et ideo vobis mandamus, quod ad præmiss. una cum præf. A.B. et C. vel duobus vestrum intendatis in forma præd' facturum, &c. salvis nobis, &c. Mandamus enim eisdem A. B. et C. quod vos ad hoc in socium admittant, sicut præd' est.*

C And then the King may send another Writ unto the said Justices of Oyer and Terminer to proceed, although that all the Justices do not come at the day of the Sessions. And this Writ is called a Writ of *Si non omnes*, &c. and shall be directed as well unto that Justice as shall be so associate, as unto the other Justices of Oyer and Terminer, and shall be such:

Rex dilect. A.B. C. et H. salutem, Cum nuper ad querimoniam D. nobis suggerentis, quod E. F. et G. ac quidam alii malefact', &c. (usq; ibi *contra pacem nostr', assignaver. vos præf. A. B. et C. et duos vestr. Justic. nostros, &c.* (usq; ibi) *audiend. et ad terminand. secund. leg. et consuetud. regni nostri, et postmodo associaver. vobis præf. A.B. et C. et duobus vestr. præf H. ad præmiss. faciendum: Vobis mandamus quod si vos omnes præmiss. faciend. commode interesse non possitis, tunc vos tres vel duo vestr. quos præsent. esse contiger' ad præmiss. fac. secund. legem, &c. procedatis. Teste, &c.*

D And if the King make Commissioners of Oyer and Terminer *A. B.* and *C.* and afterwards by another Writ doth as-

ſociate unto them I. de H. who is admitted, &c. and afterwards I. de H. dieth. The King may make a new aſſociation of other perſons to the firſt juſtices, ſo that aſſociation ſhall be made and granted after aſſociation, and he may make aſſociation of two or three perſons unto the firſt Commiſſioners, or to thoſe of them who are living to continue the proceedings, and to proceed to hear and determine the whole matter, and that they do admit thoſe he doth aſſociate or two or any of them to proceed upon the whole matter and ſuch Writ is in the Regiſter: and by that it appeareth That by the death of any of the Commiſſioners, the matter ſhall not be diſcontinued: and the Writ of aſſociation ſhall be Patent, and the Writ directed to the Juſtices of Oyer and Terminer to admit the others in their ſociety ſhall be cloſe.

And if a Treſpaſs be done unto one in the confines of two Counties, then the party may ſue a Commiſſion of Oyer and Terminer directed to certain perſons, to hear and determine the matter; and the form ſhall be ſuch: B

Rex dilectis &c. Ex gravi querela D. acceptimus, quod G. de la et cat. ipſius D. ad valenc. centum librarum apud M. R. & N. quæ ſunt in confinio Com. Norff. & Suff. juvenit vi et armis cepit et aſportavit, &c. (ubique ibi) *Juſtic. noſtri ad inquirendum per ſacramentum proborum & legalium hominum de Com. præd. per quos &c. Mandamus enim Vicecom. noſtris Com. præd. quod ad certos dies & loca in confinio Com. præd. quæ, &c. coram eis in confinio eorundem Com. ter & tales probos & legales homines, &c.*

And the Writs directed unto the Sheriffs of two Counties ſhall be Cloſe.

And a Commiſſion of *Oyer* and *Terminer* was granted upon a Reſcous made upon the Kings Bailiff where he diſtrained for debts or amercements to the King, and Reſcous was made upon him. A

And the King may grant certain Commiſſions *de Oyer & Terminer* divers Treſpaſſes done by any perſon at the ſuggeſtion of divers perſons, without nominating any in the Commiſſion, and then the form of the Commiſſion beginneth in this manner. B

Rex dilectis, &c. Ex clamoſis querimoniis diverſorum hominum de Com. N. ad noſtram ſæpius pervenient. audit. quod A. Epiſcopus Wint. &c. plur. & diverſas oppreſſ. &c. And he ſhall have the like Writ unto the Sheriff to return the Panel.

And if a man have goods and merchandiſe in any Ship upon the Seas, which Ship is broken by tempeſt, and the goods caſt upon the Lands, theſe are no wrecks, becauſe certain perſons came alive to the Land, and the Merchandiſes C

ſes or goods are taken by malefactors unknown, &c. The party may have a Commiſſion of *Oyer* and *Terminer*, directed unto certain perſons to enquire of thoſe who did the Treſpaſs, and to hear and determine the ſame, and to make reſtitution unto the party, and a Writ unto the Sheriff to return *probos et legales homines*, &c. before the ſaid Juſtices, &c.

D And a man may have Commiſſion of *Oyer* and *Terminer* to enquire of Extortions, Oppreſſions, and other miſdemeanors of under-Sheriffs, Eſcheators, Bayliffs, Clerks of the Market, and all other Officers, upon the complaint and ſuit of any one that will ſue, and a Writ unto the Sheriff to return a Jury before the ſaid Juſtices.

E And alſo the King may direct his Writ unto the Sheriff, or unto Mayors or Bailiffs, to do as much as in them lieth and appertaineth to them, to remove ſuch perſons from their Office, againſt whom it is ſuppoſed that any one will complain; Or that he doth not put ſuch or ſuch into any Office, until enquiry be made of their carriage and behaviour, &c.

F And if a man ſueth a Commiſſion of *Oyer* and *Terminer* againſt divers perſons for taking of his goods and Chattels, and when they have taken them, they waſt, ſpend or eloyn them; Then the party who ſued out the Commiſſion ſhall have a Writ unto the Sheriff, reciting the matter, commanding him to ſtay the goods, and to put them into ſafe cuſtody, until it be otherwiſe provided and adjudged by the Juſtices of Oyer and Terminer, or by other Juſtices to be after aſſigned. And upon that Commiſſion of Oyer and Terminer, if it be found for the Plaintiff, the Juſtices may return the goods to the party, and give him damages, and therefore it varieth from the Action of Treſpaſs ſued before the Juſtices of the Kings Bench, or the Common Pleas.

G And in the time of the vacation of a Biſhoprick, if any perſon hunt in the Parks or Chaſes of the Biſhop, the King may ſend his Commiſſion of Oyer and Terminer to certain perſons, to hear and determine and enquire thereof; and the Writ ſhall be ſuch:

Rex dilect. &c. Sciatis quod aſſignavimus vos et duos veſtr. Juſtic. noſtros ad inquirendum, &c. de Com. &c. per quos, &c. qui malefactores et pacis noſtræ perturbatores parcos de S. H. et A. in Com. prædict. poſtquam ipſi ad manus noſtras ratione inſtantis vacationis Epiſcopatus Ciceſtr. *devener. vi et armis freger. et in eis ſine licentia et voluntate noſtris fugaver. et feras ceper. et aſportaver. at alia enormia nobis ibidem intuler. in noſtri diſpendium et contemptum, ac contra pacem noſtram, et tranſgreſſionem*

transgressionem prædict. plenius veritatem, et ad transgressionem illas audiendum et terminandum, secundum legem, &c. Et ideo vobis mandamus, quod ad certos dies, &c. inquisic. illam fac. et transgressionem &c. terminetis in forma prædicta faciatum, &c. Mandamus, &c. et inquiri, &c. Teste &c.

And if in the time of the vacancy of the Arch-bishoprick, H any person doth hunt in the Parks or cut down the woods, or fish in the Piscaries of the Bishop, &c. when the Arch-Bishop is created the King may send and grant the Commission of Oyer and Terminer, to enquire and determine the Trespass in the time of the vacancy; and the form of the Commission shall be.

Rex dilect. &c. Ex gravi querela venerabilis Patris W. Ebor. *Archiepiscopi accepimus, quod quidam malefactor &c. parcos &c.* (and recite in the Commission all the Trespass especially) *et alia enormia, &c. in nostri contemptum manifestum, et destruct. Archiepiscopatus prædict. et dicti Archiepiscopi grave damnum, et contra pacem nostram. Et quia contempt. transgressus. &c. impunitos, &c. assignavimus vos, &c.* (usque ibi) *ad contemptum et transgressionem illas, tam ad sectam nostram quam prof. Archiepiscop. audiendum &c. terminandum secund. legem &c. Et ideo vobis &c.*

But it is to see how it standeth with the Statute of *Marlebridge*; that the Bishop shall have an Action and punish a Trespass done in the vacancy of the Bishoprick. but it seemeth it shall be so by these words in the Statute, *Quod si rapinæ aliquæ factæ fuerint Abbatibus vel aliis Prælatis Ecclesiasticis &c.* And in the end of the Statute are these words, *Si autem in terras et tenementis hujusmodi religiosorum de quibus eorum Prælati obiere seisiti, ut de jure Ecclesiæ suæ, aliqui se intrudant tempore vacationis, &c.* And it seemeth these words *hujusmodi religiosorum*, shall extend to Bishops: as much as to say, the Bishop shall punish a Trespass done in time of vacation of the Bishoprick, in cutting down of Trees, &c. for of Right the King cannot cut such Trees; but for hunting in the Parks, or fishing in the Piscaries it seemeth the King ought to have the Action for the Trespass done in the time of the vacancy; But if they do destroy all the fish within the fishpools, or kill up all the Deer in the Parks in the time of the vacancy, it seemeth reasonable, that by the Statute of *Marlebridge*, the successor have an Action for such Trespass: *Quære* of this matter.

[113]

And it is intended, That the King of right ought to keep and A defend his Kingdom, as well against the Sea, as against enemies, that it be not drowned or wasted, and to provide remedy for the

the ſame: And alſo to provide that his ſubjects paſs by all ways through the Kingdom with ſafety; and therefore if the Sea walls be broken, or the Sewers or Gutters not ſcowred, ſo as the freſh waters cannot have their courſes, the King ought to grant a Commiſſion to enquire thereof, and to hear and determine the defaults, and the form of the Commiſſion is ſuch,

Rex dilect. A. B. & C &c. Cum wall, foſſata, guttura, ſueræ, pontes, calceta, gurgites, & trenchiæ in partibus Holland. inter crucem de W. et pontem de E. per impetum maris, et refluxus, ad inundationem aquarum dulcium per diverſa loca in partib. præd. adeo dirutæ ſunt et confractæ, quod quamplurima damna et inæſtimabilia pro defectu reparationis earundem Wallarum, foſſatorum, gutturarum, ſuerarum, pontium, calcetor. et gurgitum, et obſtructionem trenchiarum præd. temporibus retroactis evenirent ibidem, majoraq; proceſſu temporis evenire timent, niſi ſuper hoc celerius remedium adhibeatur oppportunum. Nos pro eo, quod ratione dignitatis noſtræ regiæ, ad providendum ſalvation. regn. noſtr. circumquaq; ſumus aſtricti, Volentes in hac parte congruum et feſtinum remedium adhiberi, aſſigna vimus vos, &c. ad ſuper videndum wall. foſſata, guttura, ſuerar. pontes, calceta, gurgites et trenchear præd. et ad inquirendum per ſacramentum tam Militum quam aliorum proborum & legalium hominum de partibus præd. tam infra libertates quam extra: per quos, &c. poterit, per quarum defectum hujuſmodi damna contigerint ibidem, & quæ terras et tenementa tenent; ſeu communiam paſturam aut piſcariam in partibus illis, vel etiam defenſionem, commodum, et ſalvationem habent, vel qualitercunque per wall. foſſata, guttura, ſueras, pontes, calceta, gurgites præd. habere poter. ſed etiam damna per trencheas prædict. ſuſtinent vel ſuſtinere poter. et ad omnes illi pro quantitate terrarum et tenementorum ſuorum, ſive per numerum acrarum ſive per carucatas pro rata portionum tenur. ſuæ ſeu pro quantitate commun. paſtur. vel piſcariæ ſuæ ibidem diſtringendum, et per amerciamenta et alio modo prout melius videritis faciendum, puniendum una cum ballivis libertatum et aliorum de partib. illis ad hujuſmodi wallas, foſſata, gutturas, ſueras, pontes, calceta, et gurgit. in locis neceſſar. reparand. et quotieſcunque, et ubi neceſſe fuerit de novo faciend. ac trencheas præd. in locis neceſſariis obſtruend. ita quod aliquibus tenent. terrar. ſeu tenement. hujuſmodi, ſeu communiam paſturæ, ſeu piſcariæ habentibus, divit. vel pauper. aut alt. cujuſcunque fuerit conditionis, ſtatus, aut dignitatis quam defenſionem habere poterint qualitercunque per prædictam walliam, foſſatum, guttura, ſuerar. pontes, calceta, & gurgites ſeu etiam damnum per trencheas præd. ſuſtinent, vel poterint ſuſtinere, ſive fuerint infra libertates vel extra non procedant in hac parte: Et ideo

vobis

vobis mandamus, quod ad certos dies & loca quos vos, &c. ad hoc provideritis prad' vall. fossata, gutturn, fueras, pontes, calceta, gurgites, et trenches as superviderit is, & præmiss. omnia & singula faciatis et expleatis in forma prædicta, et omnia quæ per vos ordinari & fieri contigerit in hac parte, tam infra libertatem quam extra, faciatis firmiter observari. Mandamus enim vic. nostro Linc, &c. *quod venire faciat, &c. tot et tales tam milites quam alios probos, &c. tam infra libertates quam extra, per quos rei veritas melius sciri poterit, &c.*

And upon this Commission a Writ shall issue to the Sheriff rehearsing the whole matter in the Commission, commanding him to return a Jury, &c. as appeareth by the Commission. And if the Justices shall sit by virtue of that Commission, and take divers presentments and indictments, and award process upon them returnable at a certain day, and afterwards all the Justices or some of them die, the King may grant a new Commission to the Justices which are living only, or unto others, rehearsing the death of him who is dead, or of those who are dead, commanding them to continue the proceedings begun, and to proceed upon that process, and to hear and determine all these defaults and offences in the said Commission, the King reciting, that he hath sent unto the Executors, or those who died, to send all the Rolls, Records, and Process before the new Commissioners. And upon that Commission, the King shall send a Writ unto the Executors of the Justices who are dead, to send the Rolls, Records and Process as aforesaid; forthwith under their Seals, and another Writ unto the Sheriff to make a Panel, and to return the same before the new Commissioners, and upon that Commission the Justices shall make a precept unto the Sheriff, that at a certain day and place he return before them the Panel according to their Commission, and that he be there before at the same day [114] with the precept. And this new Commission shall be made as well to continue the suits and process betwixt party and party sued before the Justices of *Oyer* and *Terminer*, as well as the indictments and presentments made and found for the King. And the King may put into the Commission a command unto the said Commissioners, to receive the Records and the Rolls, and process of the said Executors. But see the Statute of Sewers and especially the Statute of King *Henry* the Eighth for that matter. A

And if any English Merchants goods be spoiled, and his goods taken beyond the Seas by Merchants strangers, and the English Merchant was beyond Sea to have Justice and restitution B

reſtitution made thereof and could not obtain the ſame, and this matter is teſtified unto the King in his Chancery. Now upon this Teſtimony, if the Merchants ſtrangers ſhall come into any place within the Realm of *England* with their goods; then the Engliſh Merchant ſhall have a Writ out of the Chancery directed unto the Mayor or Bailiffs where ſuch Merchants ſtrangers are with their goods to arreſt them, and their goods, and to keep them under arreſt until they have ſatisfied the party his damages, which he hath ſuſtained by reaſon of their miſdoing. And may have divers Writs directed under divers Ports or Towns unto the Mayor or Bayliffs thereof to arreſt ſuch Merchants and their goods, and to detain them until they have ſatisfied the Engliſh Merchant for the Treſpaſs which they have done unto him beyond the Seas. But it ſeemeth the Engliſh Merchant ſhall not have ſuch Writ for any debt due to him by contract from a Merchant ſtranger upon a contract made beyond the Seas, if the Merchant do come into *England*, or his goods; *Quære tamen* thereof. And the King ſhall recite in his Writ which is directed unto the Mayor or Bailiffs, *&c.* how he hath ſent the like Writ unto the Mayor or Bailiffs of ſuch a Town, and another Writ unto the Mayor or Bailiffs of the other Town, in the like manner; and this Writ ſhall be ſued to attach all thoſe who did the Treſpaſs, and their goods unto the value of the Treſpas, which he ſuppoſeth he was endamaged.

C And if certain perſons ought to accompt unto a Corporation, as if the King grant, To the honeſt men of the Town of *N.* a certain ſum, out of things which come to the ſame Town to be ſold, and there are Collectors to gather the ſame, who do ſo; The King may grant a Commiſſion to certain perſons, to enquire what perſons have received ſuch ſums, and to hear and determine the matter, and to hear their accounts thereupon, and do in that caſe as Auditors ſhall do, and he ſhall ſend a Writ unto the Sheriff to return a Jury before the ſame Juſtices at the day, *&c.* which they appoint, *&c.* to enquire thereof, and the Commiſſion is in the end of the Writ, *Ex parte talis*, and before the Writs of Debt in the Regiſter.

12 E. 4. 1. Conſpiracy againſt two, one dieth, pendent the Writ, per *Curiam* the Writ ſhall not abate, and note by *Finchden* 44 E. 3. 32. that one ſhall anſwer if he appear.

Writ

Writ of Conſpiracy.

Vi. Statute 33 E.1. *de Conſpiratoribus.*

A Writ of Conſpiracy lieth where two, three or more D perſons of malice and covin do conſpire and deviſe to indict any perſon falſly, and afterwards he who is ſo indicted is acquitted, now he ſhall have this Writ of Conſpiracy againſt them who ſo indicted them. But this Writ lieth againſt two perſons at the leaſt who do ſo conſpire, for if one perſon of malice and falſe imagination do labour, and cauſe another falſly to be indicted, the party who ſo is indicted ſhall not have a Writ of Conſpiracy, &c. but an Action upon the Caſe againſt him who ſo cauſed him falſly to be indicted.

Vi. after E. F.G. Conſpiracy ſhall be againſt one, & *è contr.*

Note if the Action be brought againſt divers, one are diſcharged by matter in Law.

and all but one are acquit, the Action faileth 28 *Aſſ.* 12. ſo if all but

If two men conſpire to indict another, and afterwards he E is indicted, for which he bringeth appeal upon the ſame indictment and after is nonſuit upon his appeal after declaration or before declaration, the party who was falſly indicted ſhall have a Writ of Conſpiracy, becauſe he is arraigned after the declaration upon the Appeal, and is acquitted, and before the declaration upon nonſuit he ſhall be arraigned upon the indictment, and if he be acquit, he ſhall have a Writ of Conſpiracy, &c. But if he be falſly indicted, and after an Appeal is ſued upon that indictment, and he put to anſwer unto the Appeal, and afterwards is acquitted by verdict upon the Appeal, he ſhall not have a Writ of Conſpiracy in that caſe, becauſe he is acquit upon the Appeal, and not upon the indictment, &c. But upon nonſuit in the Appeal a Conſpiracy doth lie for the cauſe before mentioned.

34 H.6 9. *per Priſot.* Note, this caſe proves that Conſpiracy lieth as well upon Appeal as indictment for he is arraigned upon the appeal, *Stamford* 172.

that is indicted at the ſuit of the King, 19 E. Fitz. Conſpir. 12. 5 E.3. ib. 22.

And if two conſpire to cauſe a man to ſue an Appeal againſt F another of felony or murther without any indictment taken or found thereof, and after the defend. is acquit by verdict, he ſhall not have a Writ of Conſpiracy againſt thoſe who conſpired to appeal him, becauſe that by the Statute of *Weſt.* 2. *cap.* 12. *Quia multi per malitiam*, it ſhall be enquired of the abettors, if he be not indicted thereof, and if they be found, he ſhall have a *Scire facias* againſt them out of the ſame Court where he is acquitted, to anſwer him his damages. And ſo if he get a nonſuit in any ſuch appeal, where there is not any indictment, the defend. ſhall have a Writ of Conſpiracy after

5 E.3. Conſpiracy 22. 13 E.3. Conſpiracy 25. the abettors ſhall not be enquired of but where the abetment is found by enqueſt.

after the nonſuit or after the acquittal: But the form of the Writ of Conſpiracy where he is acquit by verdict, doth vary in words in the end from the Writ of Conſpiracy which is founded upon the Plaintiffs nonſuit in appeal, for one Writ founded upon the verdict is, *Quouſque ſecundum legem*, &c. *acquietatus fuiſſet.* And the other Writ of Conſpiracy founded upon the Plaintiffs nonſuit is, *Quouſque idem querens per conſideration. Cur. noſtr. inde quietus receſſit.* The form of which Writs follow:

19 H. 6. 19. & 4 H. 8. 21. nuſ tiel record, is a good reply in conſpiracy.

Rex Vic', &c. *Si A. fecerit*, &c. *tunc pone*, &c. B. *et* C. *quod ſint coram nobis*, &c. *oſtenſ. quare conſpir. inter eos apud* N. *præhabita præf.* A. *de quodam jumento furtive apud* N. *capto et abducto indictari, et ipſum ea occaſione capi, et in priſona noſtra Warr. quouſque in Cur. noſtr. coram dilectis et fidel. noſtr.* R. *et* S. *Juſtic. noſtris, ad Gaol. noſtram Warr. deliberand. aſſign. ſecundum legem et conſuetud. regni noſtri acquietatus fuiſſet, detineri falſo et malitioſe procuraver. ad grave dam. ipſius* A. *et contra form. ordinat. in hujuſmodi caſu proviſ. Et habeas ibi nomina pleg. et hoc Breve. Teſte*, &c.

22 *Aſſ.* 77.

The other Writ founded upon Nonſuit in appeal is ſuch:

Rex Vic', &c. *Si A. fecerit*, &c. *tunc pone*, &c. B. *et* C. *quod ſint coram nobis*, &c. *oſtenſ. quare conſpir. inter eos apud* N. *præhabita præf.* A. *de mort.* D. *apud* E. *nuper interfect. appellari et ipſum A. ea occaſione capi et in priſona noſtra de* L. *quouſque in Cur. noſtra coram nobis idem* A, &c. *per conſider. Curiæ noſtræ inde quietus receſſit*, &c.

A And if a man cauſe one as Principal to be appealed of Felony or Murder, and another as acceſſory to him and afterwards is nonſuit in his appeal, the acceſſary ſhall have a Writ of Conſpiracy as well as the principal.

And if the Principal and one is acceſſary to be indicted of Felony, and be taken and arreſted, and the Principal is indicted and acquitted, now by that the acceſſary is diſcharged, and the acceſſary thereupon ſhall have a Writ of Conſpiracy againſt thoſe who conſpired to indict him, and the Writ in the end ſhall ſay, *Quouſq; idem* (the Principal) *ſecund. leg.* &c. *acquietat. fuiſſet, et idem* (the Acceſſary) *quietus receſſit.*

31 H. 6. 1. 34 H. 6. 9. cont. if the Principal dye before he be attainted.

B And a man ſhall have a Writ of Conſpiracy upon an indictment before any Mayor, Bailiff of any City or Burrough who have Gaol-delivery within the City or Burrough if he be acquitted before them, &c. for that acquittal diſcharged

C him of the Felony But a Writ of Conſpiracy doth not lie againſt the Indictors, &c.

20 H. 6. 5.

D If Jurors be ſworn to enquire, &c. and afterwards any of them is diſcharged by the Juſtices, he ſhall not be puniſht for what

7 H. 4. 31. 8 H. 4. 6. 21 E. 3. 19.

47 E.3.27. 27 H.2.2. 20 H.6. 5. & 31. 35 H.6.14. & 19. 14 H.6. Conspiracy 1.

what he did when he was sworn: But if he do conspire after, he may be charged for the same in a Writ of Conspiracy.

And he who cometh into Court, and discovereth Felonies, and is sworn to give evidence to the Jury, is not chargeable in Conspiracy.

In a Conspiracy against two, one pleadeth to the Writ, and the other matter in Law, which is adjudged for him, and the plea unto the Writ found by verdict against him who pleaded unto the Writ, the Plaintiff shall have Judgment against him who pleaded to the Writ: But if both had pleaded Not guilty, and one had been found guilty, and the other not, there the Plaintiff shall not recover, for then he did not conspire as is supposed by the Writ. But it may be that they did conspire in the case aforesaid, although that the matter in Law be adjudged for the Defendant. And if the Principal die before any verdict given upon the acquital, or have a pardon and plead it, then the accessary shall not have a Writ of Conspiracy, because he is discharged by the death of the Principal, or by the pardon to the principal.

Conspiracy against two, one is attaint, the other makes default, Judgment shall be against him. 25 E.3.34. but *quære* by *Stamford* 174. for 27 E.3. it is holden that one shall not answer without the other.

If a man be falsly indicted of Felony, and afterwards by Act of Parliament a general pardon is granted of all Felonies, the party now shall not have a Writ of Conspiracy, although he will plead unto the indictment and is acquitted, and will not plead the Act, &c. because his life was not in danger, and the Felony was discharged by the Act.

The Justices of Gaol-delivery arraign a prisoner for murther within the year where an Appeal is depending against the same prisoner for the same murther, which they know, and yet they proceed and acquit him he shall have a Conspiracy, although he was not acquitted nor discharged of the Appeal; See the Statute of *An.* 3 *H.*7. *cap.*1. And before that Statute it was holden, 21 *H.* 6. by *Paston* and *Newton*, That he shall have a Conspiracy, for they said that he should be hanged if he had been found guilty upon the arraignment on the Indictment. And so the Statute *de Conspiratoribus, temps, E.* 1. which Statute doth not determine in what Cases a Conspiracy shall lie. But by the Statute of 4 *E.* 3. *cap.* 10. which giveth the Justices of *Nisi prius* and of Assise to hear and determine of Conspiracies, Confederacies and Champerties, which they cannot determine in short time, they adjorn them in *Banco*, and shall be there determined.

21 H.6.21. 29. 17 Ass. 1. Br. Appeal 55.

Rastal *Nisi prius* 5 and note that before that Statute, they cannot arraign them at the Kings suit.

And

And if a man be indicted or appealed of Treaſon or Felony or a Treſpaſs done in a Forein County, &c. if he be acquit thereof, he ſhall have a Conſpiracy againſt him who procured him to be indicted or appealed, and ſhall recover treble damages by the Writ upon the Statute of 8 *H.6. c.*10.

And if a man be indicted of Felony or Treaſon, where there is not any ſuch place within the County, he ſhall have Conſpiracy, and recover his damages againſt the Abettors and Procurers or Conſpirators by the Statute of 18 *H.6. cap.*12.

And the form of the Writ for the acceſſary in a Writ of Conſpiracy is:

Quare conſpirationem &c. præf. A. de eo quod ipſe abbettaſſe et procuraſſe debuiſſet D. *quæ fuit uxor,* E. F. *et* G. *de morte ipſius* R. *quondam viri ſui appellari coram* J. *et ſociis ſuis nuper Juſticiar. noſtris ad appellum illud audiend. et terminand. indict', et ipſum eo occaſione capi et impriſonari, et in priſona noſtra* Linc. *quouſque coram præf. Juſtic. noſtris inde ſet. ſecundum legem et conſuetud. regni noſtri acquietatus fuiſſet.* &c.

[116]

A And there are divers other Writs of Conſpiracy grounded upon Diſceit, and Treſpaſs done unto the party, which are properly Actions of Treſpaſs upon the Caſe; as if two men do conſpire to endite another man becauſe he did not arreſt a Felon, who paſſed by the Town of *N.* and becauſe they cauſed him to be indicted and amerced in the Leet of *R.* and *F.* and took and impriſoned him for that amercement until he be acquit in the ſaid Leet.

B And if men ſay and affirm unto *A.* that he hath right unto ſuch Land, and procure and cauſe him to ſue an Action for the ſame againſt *B.* who is Tenant of that Land, &c. by which he is of neceſſity compelled to ſell other Lands or Tenements for the defence of his Land, &c. now he ſhall have an Action againſt thoſe who procure or conſpire to cauſe *A.* to bring this Action, &c.

C And if two men procure or cauſe one to be indicted for hunting in anothers Park, for which he is taken, impriſoned and put to charges until he hath acquitted him of the Treſpaſs, he ſhall have a Conſpiracy againſt them.

D And Conſpiracy ſhall be maintainable againſt thoſe who conſpire to forge falſe Deeds which are given in Evidence, by which his Land is loſt. 46 E. 3. 20. 39 E. 2. 13. Fitz. Conſpiracy 9.

E Conſpiracy ſhall be maintainable againſt thoſe who conſpire to bring an Aſſiſe in the name of the Plaintiff againſt a Def. and to make one Attorney for the Plaintiff, in which Aſſiſe the Plaintiff was found Villain, &c. now he may bring this Writ of Conſpiracy. 42 E. 3. 14.

And

3 Ass.13. 21 H.7.25. And Conspiracy shall be maintainable against those who F conspire to endite one of Trespass, &c. whereof he is acquitted, &c.

And Conspiracy shall be maintainable, because the def. G made one to present in the name of the Plaintiff unto an 40 E.3.19. Advowson, and for that presenting unto the Bishop who is admitted and instituted, &c.

47 E.3.15. but the office ought to be sufficient. If one conspire to cause a false Office to be found of my H Land, which is found by his procurement, &c. I shall have a Writ of Conspiracy.

In a Conspiracy against two, one justifies because he was I then Justice by Commission, when the Plaintiff was indicted before him, &c. and for any conspiracy before, he pleaded Not guilty.

8 H.4.6. 21 H.7.26. And a Writ of Conspiracy for inditing of Felony doth I not lie but against two persons at the least; but a Writ of Conspiracy, for enditing one of Trespass or other falsity made, as in the Cases aforesaid, lieth against one person only.

38 E.3.1. And a man shall not have a Writ of Conspiracy for indicting him of Felony against Husband and Wife, because they are but one person; but against Husband and Wife and a third person it well lieth.

But if the Writ of Conspiracy be brought against two, L then it shall be said properly a Writ of Conspiracy. But if it be brought against one person only, then it is but an Action upon the Case upon the falsity and deceit done, because one person cannot conspire with himself.

9 H.6.30. 22 H.6.49. And the Writ of Conspiracy may suppose the conspiracy M to be in two several places, and shall be good; and the Writ ought to be brought in the County where the Conspiracy is made and not where the Indictment was, or where the deed was done, &c.

There is also another Writ of Conspiracy which is given N upon the Statute called *Articuli super chartas*, 28 E.1.cap.10. which Writ shall be directed unto the Justices of Assise to enquire of the Conspiracy; and the Writ shall be such:

Rex dilectis et fidelibus suis W. *de* S. *et sociis suis*, &c. *assign. salut. Cum inter cetera articulos, quos dominus Edw. quond. Rex* Angl. *avus noster. ad amendac. status populi sui concessit, ordinat. fit, quod de Conspiratoribus, falsis informatoribus et malis procuratoribus duodenar. inquisitionum, assisarum et juratorum Justic. de utroq; banco, et Justic. ad ass. capiend. assign. cum in patriam venerint ad officium suum faciend. faciant inquisition' ad cujuscunque querelam sine brevi, et sine dilatione, et faciant Justic. conquerenti, prout in articulis pred. plenius*

continetur

continetur : Nos dictos articulos in omnibus inviolabiliter ob-
servari volent, vobis mandamus, quod inspecta ordinat. prædict.
ad prosecution. ann. & singul. coram vobis conquer. volent. faciat.
quod secund. formam ordinac. prædict. fuerit faciend. Teste, &c.

O And upon that he ſhall have an *Alias*, and a *Pluries*, and Attachment againſt the Mayor or Sheriff, &c. if they do not according to the Writ ſent unto them, or return the cauſe why they cannot do the ſame; and it ſeemeth reaſonable that the party in priſon ſhould have an Action upon that Statute againſt the Recognisor, if he find him not bread and water in priſon, &c. according to the Statute.

Writ of Accompt.

P A Writ of Accompt lieth divers ways, for if a man make one his Bailiff of his Mannor, &c. he ſhall have a Writ of Accompt againſt him as Bayliff. 9 H.6. Accompt 2.

And if a man make one his Receiver, to receive his Rents or Debts, &c. he ſhall have a VVrit of Accompt againſt him as Receiver. 6 R.2. Belk. Accompt 47. 14 H.4. 20.

And if a man make one his Bailiff, &c. and alſo his Receiver, then he ſhall have an accompt againſt him as Bayliff, and alſo as Receiver.

Q A man ſhall have a Writ of Accompt againſt one as Bayliff or Receiver where he was not his Bayliff or Receiver; for if a man receive Money for my uſe, I ſhall have an Accompt againſt him as Receiver; or if a man do deliver money unto another to deliver over unto me, I ſhall have an accompt againſt him as my Receiver. [117] 29 H.6. Fitz. Accompt 6. 36 H.6.10. 10 E.2. Accompt 45. 46.

A And ſo if a man enter into my Land to my uſe, and receive the profits thereof, I ſhall have an accompt againſt him as Bayliff.

B And ſo if the Father doth occupy the Land of an Infant, which the Infannt hath purchaſed or hath by purchaſe, the Infant ſhall have an account againſt him as Bailiff of his Lands; and this Writ of accompt may be ſued as well in the County as in the Common Pleas. Vi. 41. E. 2. 21. Thorpe.

C If a man have cauſe to have an accompt againſt one as Bailiff or Receiver, if he die his Executors ſhall have the Action: But an accompt doth not lie againſt the Executors of a Bailiff or Receiver, for the Receipt or occupation of their Teſtator. And the Writ of Accompt which ſhall be ſued in the County, is a *Juſticies* directed unto the Sheriff, which is ſuch. 19 E.3. Fitz. Accompt 56. the Writ of Accompt is given to Executors by Statute and was not at the common Law.

Rex Vic. Linc. *sal. Præc. tibi, quod Justic. A. quod juste & sine dilatione reddat* B. *rationabile compotum suum de tempor. quo fuit ballus suus in* N. *& recept denar. ipsius* B. *sicut rationabiliter monstrar. poterit, quod ei redd. debet, ne amplius inde clam. audiamus pro defectu justitiæ T.* &c.

And for Executors the Writ is;

Quod redd. B. *&* C. *exec. testamenti* D. *rationabil. compot. suum de tempor. quo fuit ball. ipsius* D. *in* N. *& ipsius defuncti, sicut ration. monstrare poterit.*

If two Merchants occupy their goods and merchandises in common unto their common profit, one of them shall have an Action of Accompt against the other in the County or in the Common Pleas; and the Writ in the County shall be;

Rex Vic. &c. *Præcibi quod Justic.* A. *mercatur. quod juste redd. mercat. rationabil. compot. de tempor. quo fuit recept. denar. ipsius* B. *ex quacunq; causa & contractu ad communem utilitat. ipsorum* A. *&* B. *provin sicut per legem mercator. rationabiliter monstrar. poterit, quod ei redd. debet.*

Two purchase a Manor for life, and one taketh upon him to be Bailiff to the other, no accompt lieth by 2 E. 2. Accom. 115. & 21 E. 3. ib. 68.

And this clause *Ex quacunq; causa & contractu*, ought to be put in every such Writ, whether it be sued in the Common Pleas or in the County.

And the Executor of one Merchant shall have such Writ against the other Merchant, but not against his Executor;

Rex Vic. &c. *Præc.* A. *quod redd.* B. *rationabil. compotum de tempore quo fuit receptor denarior. ipsius* A. *vel ballivus ipsius* A. *in* N. *& nisi fecerit & præd.* A. *fecerit te secur. de clamor. suo prosequendo tunc sum. præd.* B. *quod sit coram Justic. nostris apud Westm. in Quindena Pasch.* &c. *ostens. quare non fecerit, & hab. ibi sum. & hoc breve,* &c.

30 E. 1. Accompt 127. Note, that in a Writ which supposeth that *de tempore quo such receptor denariorum*, the def. shall not say, that he hath accompted from such time to such time, but ought to shew certain for what things he hath accompted. *Contra* where the Writ is, *a tempore quo fuit* Bill 3 E. 3. Accompt 61.

And a Prior or Abbot or Master of an Hospital shall have Writ of Accompt against him who was Receiver or Bailiff in the time of their predecessor, and the form of the Writ shall be such:

14 H. 4. Accompt 124. 4 E. 2 17. ib. 97. 31 E. 3. Accomp. 57. 25 E. 3. 45. in the like Action the def. said that he was not receiver since the predecessor, and admitted good. 20 E. 3. Accompt 78. Accompt lies against an Abbot notwithstanding the receipt was by the predecessor.

Præc. A. *quod reddat* I. *Priorissæ de* S. *rationabil. compotum de tempore* &c. *ball.* Aliciæ *quondam Priorissæ de* S. *prædecess. præd.* I. *& recept denar. ipsius* Aliciæ *Priorissæ* &c.

And another Writ thus, *Præcipe* A. *quod reddat.*

And another Writ thus, *Præc. A. quod redd. communitati ville de W. rationabilem computum suum de tempore, &c. quo fuit receptor denar. ipsius communitat. in W. Et nisi, &c. Et præd. communitas, &c.*

G And note that the Writ of Accompt sued in the County may at the suit of the Plaintiff be removed into the Common Pleas by a *Pone* without any cause shewed in the Writ, but shall not be removed out of the County by the Defendant without cause shewed in the *Pone*, &c. As if the Defendant plead a foreign release, then it shall be said in the *Pone*, *Quia prædict. defend. implacitand. in Cur. nostra in N. in qua loquela pendet per returnum brevis nostri protulit quoddam scriptum acquietantiæ sub nomine ipsius A. continens in se præf. A. omnes act. quas versus præf. B. def. ratione computi præd. habuit, eidem B. remisisse in Com. Linc. fact. ut dicitur, quod quidem scriptum præf. A. omnino dedixit, propter quod loquela illa in Cur. præd. ulterius deduci non debet, Fiat executio istius brevis si causa sit vera, & aliter non.*

H There is another manner of Writ of Accompt founded upon the Statute of *Marlebridge, cap. 23.* And that Writ lieth where a man ought to make Accompt as Bailiff or Receiver, and hath no Lands nor Tenements by which he may be distrained, but is vagrant in secret places, where he will not be found, then the Plaintiff shall have a Writ of Accompt which is called *Monstravit* upon the Statute, and the Writ is of this form:

Rex Vic. &c. Monstravit nobis Prior de N. quod cum A. extiterit ballivus suus in K. omnium rerum & bonorum suorum tur. habens administrationem, idem A. computo suo non soluto subterfugia quærens, latitat in balliva tua, nec possit inveniri & distringi ad reddend. præf. Priori computum suum prædict'. Et quia de communi consilio regni nostri provisum sit: quod si ballivi, qui dominis suis computum suum reddere tenentur, se subtraxerint, & terras vel tenementa non habeant per quæ distringi valeant, per eorum corpora attachientur: Ita quod Vicecom. in quorum ballivis inventi erunt venire fac. ad comput. suum reddi. Tibi præcipimus, quod si præd' Prior fecerit te secur. de clamore suo prosequendo, tunc præd. A. attach. ita quod sum habeas coram justic. &c. tali die, ad reddend. præf. Priori computum suum præd. sicut rationabiliter monstrare poterit, quod ei reddere debet, &c. & habeas ibi, &c.

Vi. 4. 8 2. Br. 791. where it is holden, if he hath any Land it is sufficient, but there he had in the right of his wife, but 6 l. 8 d. and had not title to be Ten. by the Cuttese, therefore not sufficient.

But this Writ is not now in use, because that by the Statute of *West. 2. cap. 12.* made after the Statute of *Marlebridge*, proces of Outlawry is given in a Writ of accompt against Bailiffs and Receivers; But yet he may sue a *Monstravit*

[2 Inst. 81]

at this day if he will: and the form of the Writ of *Monstravit* directed unto the Sheriffs of *London* is such:

Rex Vic. Lond. *salut. Monstravit nobis* A. *quod cum* B. *existerit receptor denariorum* A. *ipsius & ball. suum in* N. *idem* B. *computo suo non solut. interfugia quærens latitat in Ball. vestra, &c. Et quia &c. vobis præcipimus, quod si præd.* A. *fecerit vos secur. de clamor. suo prosequendo, tunc præd.* B. *attachiatis, ita quod sum habeatis coram Majore civitatis nostr.* Lond. *& vobi in proxim. Hustingo vestro* Lond. *ad reddend. præf.* A. *compotum suum præd' sicut, &c. Et habeatis, &c.*

And the Receivers and Bayliffs may be put in one Writ in the *Monstravit* thus, *Receptor denar. ipsius* A. *& ball. sui in* N. But if the Writ be sued in the Common Pleas, then the Bayliff must be put, *Sicut ball. sui et receptor denariorum ipsius* A. *in* N.

See that in accompt against one as Bayliff and Receiver, the good, *per* 32 E. 3. accompt 60.

And a Writ of Account lieth against Gardian in Socage; but the form of the Writ doth vary from the form of the Writ against the Bailiff, &c. and the form is such:

Defendant said, that he was Gardian in Socage and not Bayliff, and

13 E. 3. accompt 77.

Rex Vic. &c. Si A. *fecerit, &c. tunc sum. &c.* B. *quod sit coram Justic. &c. ostens. quare cum de communi consilio regni nostri provis. sit, quod custodes terrarum & tenementor. tenentur in socagio hared. terrarum & tenementorum illorum cum ad plen. ætat. pervenerint, reddant rationabil. compotum suum de exitibus de terris & tenementis illis provenientibus de tempore quo custod. illam habuer. ratione minoris ætatis hared. prædict. idem* B. *præf.* A. *rationabil. compotum suum de exitibus proveni. de terris & tenementis suis in* N. *quæ tenentur in socagio, & quorum custod. idem* B. *habuit dum præd.* A. *infra ætat. fuit, reddere cont. ut dic. & ideo, &c.*

Notwithstanding that he be no Gardian in droit, if the Defendant hath the occupation or manurance of the Land, the action lieth *per* 32 E. 3 accompt 59. Fitz. 27.

And if a man during the minority of the Heir enter into the Land of the Heir which he hath by Descent, and take the profits to the use of the Heir, the Heir at full age shall have an accompt against him as Gardian for the profits received until he come to the age of 14 years; and for the profits received after the Heir come of the age of 14 years, he shall have a Writ of accompt against him as Bayliff, and not as Gardian, for he cannot be Gardian longer for Socage Lands but till 14 years of age: But the Heir shall not have an Action of accompt against him as Gardian until the Heir be of full age of one and twenty years, and that by the words

Vi. old N. B. 9 and after 149 B. for admeasurement of Dower by Infant. 16 E. 2. accompt 30. 3 & 4 Mar. Dy. 137.

of

of the Statute, which are, *Qui cum ad ætatem pervenerit*, &c. But he ſhall have an Action of accompt againſt him as Bayliff during his Nonage, at what time he will againſt him who taketh the profits of the Lands which he hath by Deſcent, be he Gardian in Socage in Right, &c.

C And a Writ appeareth in the Regiſter, That if a man be found in arrearages upon his accompt and the party Plaintiff do arreſt him in *London* for thoſe arrearages, then he may ſue a Writ in Chancery directed unto the Sheriff rehearſing the whole matter, commanding the Sheriff to detain and keep in priſon him who is ſo arreſted, until he hath ſatisfied and paid the arrearages. And it ſeemeth by the ſame reaſon, That if a man ſue an Action of Debt upon arrearages of accompt before Auditors, and hath the party arreſted. That he ſhall have a Writ out of the Chancery unto the Sheriff, to keep him in priſon until he hath paid thoſe arrearages, but I conceive this Writ doth not ſtand in Law, that he ſhall be kept in priſon without anſwering unto the ſute commenced againſt him.

D A man may have a Writ of accompt againſt a woman as *Receptrix denariorum*, or againſt a Chaplain, but not againſt an Infant. 14 H.6.4. 16 E.3 accompt 52.

E A man may have an accompt againſt one as Bayliff of a Court or Hundred.

F And a man ſhall have an accompt againſt a Prior upon a Receipt had by his Commoign, but there the Writ doth ſuppoſe that he himſelf did receive the money, &c. and ſhall not ſay, by the hands of his Commoign. And ſo a Receipt made by the Husband, by the Hands of his wife, is his own Receipt, and the Writ and the Count ſhall ſuppoſe that he himſelf did receive, &c. without ſaying by the hands of the wife: but it is otherwiſe if a Prior or Husband receive money of a ſtranger, then the Count ſhall be that he received by the hands of the ſtranger, &c. But the Writ ſhall be general, *Tempore quo fuit receptor denar'*, without ſaying by whoſe hands, but he ſhall ſhew that in the Count or declaration. 2 H.5. 2. 47. E.3. 16. 4 E. 3 ac. 44. E.1. but 5 E.3. 21. accompt 100. cont.

G And if a man deliver goods or money beyond Sea to deliver to him again in *England* at a certain place, he ſhall have an account for thoſe goods &c. 41 E.3.9.12.

And if a man deliver money to one upon condition that if he do ſuch a thing, he ſhall have the money, if not, then he who delivered it ſhall have it again, if he perform not the Condition he ſhall have an account againſt him for the ſame. 41 E.3.10. 12 H.4.18. ac. 11.H.4. 75. Skreen.

If two have goods in Joynter, or in Common, and one of them deliver the goods to one to render account, he alone ſhall have an action for them. 21 E.3.accompt 66.

43 E.2.21. 45 E.3.20. [119] If two have a Ward, and one take all the profits, the other shall have an account against him, *P.45 E.3.* I

If the Husband hath received the profits of the Wives Lands, and die, the Wife shall not have a Writ of account of the profits nor of the Rents, during the Coverture against the Husbands Executors. A

4 E.3.17. Fitz. accom. 97. If a Receiver or Bailiff make a Deputy, yet the action of accompt shall be brought against the Receiver or Bailiff themselves and not against their Deputies: for the Deputies receive the same to their Masters uses. B

11 R.2. accompt 48. 4 E.3. accompt 34. He who is Surveyor or Controller of Lands, shall not be charged in accompt. C

12 E.3. ibid. 75. & 13 E.3 ibid. 96.

6 E.3.3.&c. compt 102. 8 E.3.acc.94. An Apprentice shall not be charged to accompt by a Writ of accompt: But the Master shall have a Writ of accompt against a Servant who is sent to receive money, &c. if he be receiver. D

Vi. accompt as Receiver, the Defendant said that he was his Apprentice, and no Plea, but he was forced to answer to the Receipt.

The Parish Priest shall not be charged for the Offerings offered by a Writ of accompt, if it be not otherwise agreed betwixt them, &c. For the Clerk holds the vessel in which they are put. I

If the King grant unto a Town the Toll of the things sold in the same Town, for the walling of the Town, and other necessary things in the Town, and there be Collectors to receive the same if the Collectors will not render account thereof, They may have a Commission out of the Chancery to enquire of the Receipt of the Toll money, and the Receivers, and to hear and determine the same, and to hear their accompts, and a Writ of attendance unto the Sheriff, to return a Jury before the Commissioners. J

Writ of Debt.

C.5 p.2.79. 10 H.6.7. Debt per Amercement in Leet. 22 H.6.56. A Writ of Debt properly lieth where a man oweth another a certain sum of money by obligation, or by bargain for a thing sold, or by Contract, or upon a Loan made by the Creditor to the Debtor, and the Debtor will not pay the Debt at the day appointed that he ought to pay it, then G

13 H.7.2. in debt against Successor upon a Lease to his Predecessor which comes to the use of the House, the Writ shall be in the *Debet*.

the

the Creditor ſhall have an Action of Debt againſt him for the ſame, and it may be ſued in the County before the Sheriff by Juſtices, as well as in the Common Pleas; and the form of the Writ is ſometimes in the *Debet & Detinet*, and ſometimes in the *Detinet* only, and not in the *Debet*, and if it be in the *Debet* it ſhall abate. It ſhall be always in the *Debet* and *Detinet*, when he who makes the bargain or Contract, or lends the money, or he to whom the Bonds is made bindeth the Action againſt him who is bounden, or Party to the Contract or bargain, or unto the lending of the money: and
H money delivered by the Writ. But if a man ſell 20 quarters of Wheat, or a Horſe; if he bring Debt for the Horſe the Writ ſhall be in the *Detinet* only, and the form of the Writ ſued in the County before the Sheriff for money, is ſuch:

In Debt againſt husband and Wife for a Debt before Coverture, the Writ ſhall be *Debet & detinet*, ſo in Debt againſt or for the Succeſſor in reſpect of Obligation made to the Predeceſſor, 47 E. 3. 23. 40 E. 3. 16. 9 E. 4. 41. 47 E 3. 33. If the Heir be to bring Debt, it ſhall be in the *Detinet*.

Rex Vic. Surr. ſalutem. Præcipimus tibi, quod Juſticies A. *quod juſte & ſine dilatione redd.* B. 20 *l. quos ei debet ut dic. ſicut rationabilit. monſtrare poteſt, quod ei redd. debet, ne amplius inde clamorem audiamus pro defectu juſtitiæ, &c. Teſte, &c.*

I And if the Writ of Debt be for other goods or Chattels than money, then the Writ of Debt ſhall be ſuch:

Rex Vic. &c. Præcipimus tibi, quod juſt. A. &c. *quod redd.* B. *quendam librum, vel quendam typhum, vel quendam equum, vel duos agnos pretii, &c. quem vel vos vel quæ ei injuſte detinet ſicut, &c.*

I And if a Writ of Debt be brought in the County before the Sheriff by Juſtices, the Plaintiff may remove the Plea unto the Common Pleas by a *Pone*, without ſhewing cauſe in the Writ: but the Defendant ſhall not remove the Plea out of the County without ſhewing cauſe in the *Pone*, and yet in the end of the Writ, it ſhall be ſaid. *Fiat execut. iſtius brevis ſi cauſa ſit vera, aliter non.* And the cauſes wherefore the Defendant may remove the Plea, are many, as appeareth in the, Regiſter. One, if the Defendant plead a foreign Plea, which cannot be tried in the County &c. Or if the Defendant ſhew that he before whom the Plea is depending, doth maintain the Plaintiff, or favour him &c.

And if the Plea of debt be ſued within any Liberty, or Court of any Borough or City &c. the Plaintiff may remove the Plea by a *Recordare* into the Common Pleas without ſhewing any cauſe in the Writ. But if the Defendant ſue to remove the Plea by a *Recordare* into the Common Pleas, out

of any Town or City, he ought to ſhew cauſe in the Writ, as before is ſaid. And if the Sheriff remove the Plea out of the Court by a *Pone* at the Suit of the Defendant or Plaintiff; and afterwards the Bailiffs or Officers of the Court proceed in the Plea, and give Judgment and award Execution, &c. then the Defendant, or he againſt whom the Judgment is given, and Execution awarded, ſhall have an Attachment againſt the Bailiffs, or thoſe who ſo proceeded to Judgment, &c. to anſwer as well the King for the contempt, as the party his damages, &c. And the form of the Writ of Debt in the Common Pleas is:

Rex Vic. &c. Præcip. A. *quod juſte, &c. redd.* B. C. l. *quos ei debet & injuſte detinet ut dicit. Et niſi fecerit, & præd.* B. *fecerit, &c. tunc ſum. per bones ſum. præd.* A. *&c.*

29 H. 8. 1. And the Rule in the Regiſter is, *Quod in brevi de debito de catallis nunquam dicat. quod ei debet.* And if the Debt be brought by Executors for a Duty due to their Teſtator, the Writ ſhall be *Quos ei detinet*, and not *Debet et detinet*, becauſe they were not parties to the Contract. And ſo if Debt be brought by the Creditor againſt Executors for the Debt of the Teſtator, the Writ ſhall be, *Quos ei detinent*, &c. and not *Debent & detinent*, although by the Writ he demand money, *viz.* 20 l. or other ſum of money.

[120] If a man make B. and a Monk his Executors, and is indebted unto another, the Action of Debt ſhall be brought againſt B. and the Abbot and the Monk, and the form of the Writ ſhall be ſuch:

Præcip. B. *executt. teſtamenti* S. *& Abbati de* C. *& fratr.* A. *de* C. *concanonico ejuſd. Abb. de* C. *coexecut. præd.* B. *teſtamenti præd.* 20 l.

And if they bring an act. the Writ ſhall be: *Præcip.* D. *&c. qd. redd.* B. *executt. teſtamenti* S. *& Abbat. de* C. *fratri* A. *de* C. *concanon. ejuſdem Abbat. de* C. *coexecut. præd.* B. *teſtamenti præd.*

Joynder in action 75. H. 7. 8. *Keile.* A leaſe for years to a ſecular man and an Abbot, *quare*, how they hold ſee Eliz. Plow. 441. the heir of the heir ſhall be charged.

And if a man be bound unto B. and an Abbot in 20 l. and B. dieth, his Executors and the Abbot ſhall joyn in the action of Debt, and the Writ ſhall be ſuch:

Præcip. C. *&c. quod juſte, &c redd* P. *& M. executt. teſtamenti* R. *& Abb. de* C. 10 l. *&c. quas, &c. Et niſi, &c. & præd. executt. et Abb. fecerint te, &c.*

And if a Writ of Debt be brought againſt the Heir upon an Obligation of his Anceſtors, the Writ ſhall be ſuch: *Præcip.* A. *de* S. *filat hær.* B. *quod redd. &c.*

And if there be divers Heirs, then the Writ ſhall be: *Præcip.* A. *de* S. *fratri et uni hæred.* B. *et* B. *conſanguineo & alteri hæred. ejuſdem* B. *&c.*

And if a man be in debt, and die inteſtate, or the Executors refuſe to be Executors, for which the goods come to the hands

hands of the Ordinary, the Creditors ſhall have an action of Debt againſt the Ordinary by the Statute of *Weſt.* 2. *cap.* 19. and the Writ ſhall be ſuch:

Præcip. A. Epiſcopo Lincoln. ad cujus manum bona et catalla quæ fuer. B. qui obiit inteſtatus, ut dic. devener. quod juſte, &c. redd. &c.

And if the Goods come unto the hands of the Ordinary, and afterwards the Ordinary maketh Executors, and dieth, the Creditor ſhall have an action of Debt againſt the Executors of the Ordinary, and the Writ ſhall be ſuch:

Præcip. A. de B. et C. de T. execut. teſtamenti magiſtri R. de P. nuper Decani Eccleſiæ beati Petri Eborac. et cuſtod. ſpiritualitatis Archiepiſc. Eborac. ſede vacante, ad cujus manus bona et catalla quæ fuer. E. de B. qui obiit inteſtat. ut dicitur, devenerunt, quod juſte, &c. redd. &c.

And it appeareth by the Regiſter, that in *Anno* 16 *E.* 3. the Plaintiff was anſwered unto ſuch Writ which he brought againſt the Executors of the Ordinary.

And there is a Writ of Debt in the Regiſter for the Ordinary, againſt him who was indebted unto him who died inteſtate. But the Opinion of the Sages of the Law at this day is, That the Ordinary ſhall not have an Action of Debt againſt thoſe who were indebted to the Inteſtate, becauſe the action is given to the Adminiſtrator, and the Ordinary may commit adminiſtration of the Goods when he pleaſeth. But before the Statute of 31 *E.* 3. *cap.* 11. the Adminiſtrators could not have an action of Debt againſt the Debtors, wherefore it was then thought reaſon, that ſome perſon ſhould have the action for thoſe Debts, &c. But the Ordinary at this day may have an action of Treſpaſs for taking of the goods out of his own poſſeſſion, but not for taking them out of his poſſeſſion who died inteſtate as Adminiſtrators may have. 14 *H.* 4. 30. ſo againſt Gardian of the ſpiritualties.

E If a man be retained in *England* to do Service beyond Sea, receiving 10 l. *per an.* he ſhall have an action of Debt in *England* where the retainer was.

F If a man married a woman who is in debt to divers perſons, the husband and wife ſhall be ſued for theſe debts, living the wife: but if the wife die, the husband ſhall not be charged for the debt after the death of the wife, if the Creditor of the husband and wife do not recover the debt during the coverture, which was due by the wife before the coverture: for then, although the wife dieth, yet the husband ſhall be charged for that Debt by that recovery after the death of the wife. 42 *E.* 3. 1.

G A man ſhall be charged in debt for the Contract of his Bailiff or Servant, where he giveth authority unto his Bailiff 2 R. 3. Fitz. Dett. 3.

or

or Servant, to buy and sell for him: and so for the Contract of the wife, if he give such authority to his wife, otherwise not.

If a man lease Lands for years rendring Rent and for default of payment that he shall re enter; if he do re enter in the Land for not payment of the Rent, yet he may have an action of Debt for the Rent, for which he doth re enter, and in the Writ shall recover the Rent, for which he re-entred. H

17 E.148. 28 E.3.Debt 6.36 E.3.7. Debt 10.

If a man bind him and his Heirs unto another in 20 l. and dieth, the Heir shall be charged to pay the same, if he have Lands by descent in Fee simple from his Ancestors, otherwise not. But if a man be bounden in an Obligation to one and his Heirs, and the Obligee dieth, his Heir shall not have an Action of Debt upon the Obligation, but his Executors. I

22 E 3.Debt 235. A man was bound to one and his heirs, and holden the heir should not have debt living the Executors. 9 H. 6. 52. the heir shall not have Detinue for a deed bailed by his Father. 19 H.6.4. 42 E.3.12. it is said that if the Ordinary do not commit administration, the heir shall have Debt.

If a man promise to one 20 L to marry his Daughter, and he marrieth her, he shall have an Action of Debt against him upon that promise, *H.31 E.3.* K

29 H.2.Debt 266. 45 E.3. 24.acc.if it be by Deed.

If a Parson have an annuity in Fee in the right of his Church, and the annuity is behind, and the Parson dieth, his Executors shall have debt for the Arrearages of the annuity in the life of the Testator. L

35 E.4.32. contr.per Cur. 37 H.6.8. acc. 21 H.7.5.

It a man grant to one a Rent in Fee, and further grant, that if the Rent be behind &c. that he shall forfeit for a penalty 40 s to the Grantee and his Heirs, If the Rent be arrear, the Grantee shall have Debt for the penalty. And so the Heir shall have the penalty, and shall have debt for the same, because it is an Inheritance and perhaps may continue &c. M

7 H.6 19. 21 H.7.95. *Thirning* and *Bvans*, that he may distrain for the penalty, *quod non est lex*. But note, that if a man be in prison by *Capias ad computand.* and after escape, no Debt, but action upon the Case, because he is not in prison for any duty. b. *Cook & Paget* 1, 5 E.4.19. 16 E.4.2, & 3.

If a man condemned in debt or damages, and be committed unto prison for the same; if the Gaoler suffer him to go at liberty, or he escape out of prison, the Gaoler shall be chargeable in debt to him at whose suit he was imprisoned, and his Executors. A

If a man lend another man a Horse until a certain day, and then he to redeliver the Horse or 10 l. at the same day, after the day if the Horse be not delivered, it is in his election to

50 E.3.16. B G

to bring an Action of Debt for the Horſe in the *Detinet*, or an action of Debt for the 10 l. in the *Debet*.

C If a man make a Leaſe for life unto a woman, rendring Rent, if he marry, and after the Rent is behind, and the wife dieth, the Husband ſhall be charged in an Action of Debt for the Rent behind, becauſe he took the profits of the Lands by reaſon of his wife. Otherwiſe it is of an Obligation made by his wife before marriage, then the Husband ſhall not be charged, if a recovery be not againſt him and his wife in the life of the wife. 26 E. 3. 44. Debt 180. 10 H. 6. 11. 9 H. 6. 29. 20 H. 6. 45. Aſcough. 49 E. 3. 25.

If a woman be endowed of a Rent, and afterwards taketh Husband, and the Rent is arrear, and the wife dieth, the Huſband ſhall have an Action of Debt for the Rent, becauſe it was a duty in him during the marriage. But if a man be bounden unto a woman, and ſhe taketh Husband, and the day of payment cometh during marriage, and after the wife dieth, the Husband ſhall not have an Action of Debt upon the Bond, becauſe it was a duty due unto the wife, and a thing in Action before the marriage. Vl. 14 H. 6. 26. 10 H. 6. 11.

D If a Parſon have an annuity in Fee, and the ſame is behind, and the Parſon doth reſign, yet he ſhall have an action of Debt for the arrearages before the reſignation. 19 H. 6. 14. *Quare. Aſſiſe pro. Nemen con.*

E And if a man leaſe a Manor for life, and the Rent is behind, which the Tenants who held of the Mannor are to pay, and the Leſſee for life of the Mannor dieth, his Executors ſhall have Debt for the arrearages of the Rent due by the Tenants of the Mannor.

And ſo if the Tenant for life of the Mannor, ſurrender his Eſtate to him in the reverſion of the Mannor, yet he ſhall have Debt againſt the Tenants of the Mannor for the arrearages before.

F If a man have a Patent from the King to have a certain ſum for term of years or for life out of the Cuſtoms of *London*, and thereupon he have a *Liberate* to the Cuſtomer to pay him, which he delivereth to the Cuſtomer, at which time the Cuſtomer hath enough in his hands to pay him now by the delivery of the *Liberate* and the aſſets in the hands of the Cuſtomer, the Cuſtomer is debtor unto him, and he ſhall upon this matter have debt againſt him. 37 H. 6. 25. If a *Liberate* be delivered to Cuſtomers or other Collectors that will ſatisfie, they ſhall be diſcharged againſt all others. 27 H. 6. 9. 21 H. 6. Debt 43.

G If two ſubmit themſelves to an award, and the Arbitrators award that one ſhall pay the other 10 l. he ſhall have an Action of Debt upon that arbitrement.

It

If an Abbot hath an annuity in Fee, and the same is be- H
37 H.6 25. hind, he shall not have an Action of Debt for the arrearages, because the annuity continueth.

Neither shall a Parson have an action of Debt for the ar- I
rearages of an annuity, which he hath in Fee during the time that he is Parson: but if he resign, he shall, or if he dieth, his Executor shall have an Action Debt for the same. And if a man who is Bayliff do accompt before Auditors, and it is found that he hath expended more than he
38 H.6. 5. 7 H.4.3. hath received, for the surplusage he shall have an action of Debt against the Lord whose Bailiff he was. But if a Receiver account, and is found in surplusage, many say that he shall not have an Action of Debt for the same, because he is bounden to lay out any parcel thereof: but it seemeth if he do it by command of the Lord, that then it is reason that he have an Action of debt against the Lord for the surplusage.

41 E.3. Debt 227. An Abbot shall be charged in an Action of Debt upon a K
3 E.4.26. the writ shall be general, and the Count special. Loan of money made unto his Predecessor, if the money came to the use of the House.

An Attorney shall have an Action of Debt against his Clyent L
20 H.6.21. *Newton.* for money which he hath paid unto any person for his Clyent, for costs of Suit, or unto his Council, &c.

If a man contract to pay money for a thing which he hath M
22 H.6.4.59. H.8.22.ac. 1 H.6.3. *per Babington.* bought; if he make a Bond for the money, the Contract is discharged, and he shall not have an Action of Debt upon the Contract.

9 E.4.20. and so 10 H.7.21. and 24. 22 H.6.16. 21 H.7.5. *Contr* 3 H.4.17.

If a man make a Lease for years, rendring Rent of Lands N
5 H 7. 18.ac. 50 Lord by escheat or a reversion. devisable by will, and afterwards deviseth the reversion of the same Lands unto a stranger in Fee, the Devisee shall have an Action of Debt for the Rent reserved, without any attornment of the Tenant for years. But if the Lessor hath granted the reversion by fine or deed, the Grantee shall not have an Action of Debt without attornment of the Lesse for the Rent reserved.

4 E.4.25. Denby 5 H. 7.24. Brian, 23 H.4. Debt 167. 5 H.5. 8. If a man be indebted, and entreth into Religion, his Ex- O
ecutors shall be sued for the Debt, and not the Abbot who accepted him into Religion.

7 H.6 5.1 H. 6 Debt 26. 7 H.44.4 E. 4.16.22 E.4. 67. If a man be condemned in Tresspass, or in Debt upon a P
Bond, where he denieth his deed, and afterwards he is taken by a *Capias pro fine* at the Kings Suit within the year, and committed to prison; if the Gaoler suffer him to escape, he shall have an Action of Debt against the Gaoler: yet he was not committed to prison at his suit, but at the Kings suit.

But

But within the year after the condemnation and Judgment, the ſuit for the King ſhall ſerve as well for the Party as the King, becauſe the King was entituled to it by the Party, but after not: for it ſhall be intended that the Party is agreed with him who is condemned, and therefore after the year he ſhall be put to his *Scire facias* upon the Judgment. 7 H.4.144. E.4.16.22. Aſſ.74.21 E. 4.67.14 H. 7.15,19,20. 11 H.4.44. Skrene.

A If a man Jeaſeth Lands for term of years rendring Rent and afterwards the Rent is behind, and the Leſſee ſurrendereth his term, yet the Leſſor ſhall have an Action of Debt for the arrearages before, as it ſeemeth by *P.38 E.3. tamen quære*, for the opinion is contrary to 2 *H.6.* [122] 9 E.3.7. Debt 149. 19 H.6. Debt 143. Vi. 14 H.2. 14 for waſt.

B If a Servant will not do his Service, by the Statute of *E.3. cap.* 9. he ſhall be arreſted and committed to the Gaol, and if the Gaoler ſet him at large, he ſhall loſe 10 l. to the King, and 5 l. to the Party. Now if the Gaoler ſet ſuch Priſoner at large, the Party who would have him detained, ſhall have an Action of Debt againſt the Gaoler. 24 E.3.cap. 9. 7 H.6.2.

C If a man recover damages in an Action of waſte, he may have an Action of Debt upon the recovery if he will. 43 E.3.2.

D And ſo a man may have an Action of Debt upon a Statute Merchant or Staple, or upon a Recognizance, or may have execution according to the Statute at his pleaſure. 3 E.4.27. *quære*, 43 E. 3.2.

E A Prior did recover an annuity in Fee againſt a Parſon and afterwards he ſued a *Scire facias* againſt the Parſon, and did recover in the *Scire facias* the arrearages of the annuity, and afterwards he brought an Action of Debt againſt the Parſon upon the Recovery in the *Scire facias* for the arrearage, and it was maintainable.

F An Abbot ſhall be charged in an Action of Debt for Victuals, or other neceſſary things brought by the Butler, or other Officer who is deputed to make Puryeyance for the Abby in time of vacation. 26 E.3. 59. Debt 165.

G If a man levy aid of his Tenants for the marriage of his daughter and dieth, the daughter not married, the daughter ſhall have an Action of Debt againſt the Executors of her Father for the aid levied; and if the Executors have not any thing, ſhe ſhall have an Action of Debt againſt the Heir for that aid, if he have any thing by deſcent. 3 E.3. Itin. North. Fitz. Debt 57. See 32 Li. ac.

H If two Coparceners make partition, and one granteth or promiſeth unto the other a certain ſum of money for the equality of the partition, ſhe ſhall have an Action of Debt upon this promiſe, and ſhall recover the money. 30 E.3.Debt 131.

I If a man make a Tally, and make a Bond thereupon, and Seal and deliver it as his Deed: yet it ſhall not bind him, but he may plead againſt the ſame, that he owed him nothing 12 R.2.Debt 44 E.3. 21. 44 E.3. 2. & 9 H.5. 24.

If a man become debtor to another by word it shall not make him Debtor, if not by the custom of London.

thing, or wage his Law. For an Obligation ought to be made in writing in Parchment or Paper, and not written upon any piece of wood, as a Tally is.

And a man shall have an Action of Debt against him who becometh pledge for another upon his promise to pay the money, without any writing made thereof, *qd. vi.* in title Pledge acquietand. *P.* 43 *E.* 31.

Writ de Rationabili parte Bonorum.

If the father hath two Sons, and maketh one of them his Executor. *Quære* if he shall have any part as Son, because he is Executor, and hath advancement by that. A Woman did demand the moiety of her husbands goods, because he had no children, and counted upon the custom of the Realm, 31 E. 3. But 21 H. 6. 1, and 2. seemeth it is by Custom, and not by the Law of the Land. 7 E. 4. 10. ac. M 19, and 19. *Eliz.* in B. R. A Writ was brought and allowed there, notwithstanding that exception was taken at it, that it was maintainable by special Custom in *London*. 1 E. 4. 5. Pilling, &c.

30 H. 6. Respondr. 95. A woman brought the Writ for the moity, and counted upon the Custom not speaking of any Town, or that it was the Custom of the realm, 28 H. 6. 4. 40 E. 3. 3 E. 3 Dec. 136. Counts by the Custom of the Town of *Northampton*. 17 E. 99 and 76, that it is by the Common Law. 7 E. 4, 20. Exception was taken, because he did not count that the Custom did continue.

THis Writ lieth where the VVife after the death of her Husband, cannot have the third part of her Husbands goods after the debts are paid, and funeral expences performed: for then she may have this Writ against the Executors of her Husband: and it seemeth by the Statute of *Magna Charta, cap.* 18. that this was the Common Law of the Realm; and so it appeareth by *Glanvil*, that it is the Common Law, that after the debts paid, the goods shall be divided into three parts: one part for the wife, another part for Sons and Daughters, and the third unto the Executors; but yet the Writs in the Register rehearse the Customs of the Counties, and are of this form.

Rex Vic. &c. Si A. quæ fuit uxor B. &c. fecerit, &c. tunc sum. C. & D. execut. testamen. prædict. B. qd. sint, &c. ostens. quare cum secund. cons. in com. prad. hactenus obtentum, uxores post mortem virorum suor. habere debeant rationabilem partem bonor. virorum suor. prad. sibidem execut. præfat. A. rationabilem partem summ ad valentiam 10. marcar. de bonis & catall. quæ fuer. prad. B. quondam viri sui detinent, minus juste, & ea ei reddere contradicunt, in ipsius A. damnum non modicum & gravamen, & contra consuetud. prad. & habeas ibi sum. & hoc breve, &c.

And

And the like Writ the Sons and Daughters may have againſt the Executors; and the Form is. 2 E.2.Fitz. Detinue 561 30 E.ibid.

52. And ſee 31 H.8. it hath oftentimes been put in ure as Common Law, and never demurred upon.

Rex &c. quia A.de N.et S.ſoror ejus fecerunt nos ſecur.&c.ſum. &c.I.de H.et E.exec. teſtament. R.de N.qd.ſint,&c. oſtenſ. quare cum ſecund.conſuetud.in com.præd.hactenus obtentam et approbatam pueri poſt mortem patrum ſuorum,qui eorum hæred.non ſunt hec in vita patrum ſuorum promoti fuer.hab.debeant rationabiles partes ſuas de bonis et catall.quæ fuer.patrum ſuor.præd.iidem exec.præſ.A.de N.et S.poſt mortem præd. R. patris ſui cujus hæred.ipſi non ſunt,nec qui in vita ejuſdem patris ſui promoti fuer. rationabiles partes ſuas ad valenc.decem librar.&c.ut ſupra.

Manage is no advancement, if the Fathers goods be not given in his life, for iſſue was taken thereupon. 3 E.3.Dett. 156.

Secta ad Molendinum.

M *SEcta ad Molendinum* lieth, where a man by an uſage time out of mind, &c. hath uſed to grind his Corn at the Mill of *B.* and afterwards he goeth unto another Mill, and withdraweth his ſuit from *B.* Mill, then may he have this Writ. And alſo it ſeemeth that the Lord may have this Writ againſt his free-Tenants who hold of him to do ſuit at his Mill, and yet he may diſtrain his Tenants for the ſuit, and avow for the ſame.

Quare If a man may create a Tenure at this day upon a gift in tail, or ſuch eſtate, P.20. *Eliz.* 367. A Leaſe was made for life of parcel of the demeans doing ſuit to his mill and good.

A And by Preſcription a man may have ſuit to his Mill; of the villeins of a ſtranger, and have *ſectam ad molendinum* againſt them, and that it ſeemeth by reaſon of their reſidence in certain which they dwell upon. And this Writ is ſometimes *Vicontiel*, and ſhall be ſued in the County by a Writ of *Juſticies*, at the Plaintiffs pleaſure, or in the Common Pleas by a *Præcipe*, &c. and the Form of the Writ in the County is ſuch.

[125] Note, that Tenant for Life of a Manor ſhall not have this Writ, becauſe it is in the *Debet et ſolet*, 20 Eliz Dyer.Br.note 127,128. *Curia Clamande* lieth for Tenant for life, and yet the Writ is, *Debet & ſolet.*

Rex Vic. &c. Præcipimus tibi, quod Juſticies A. *qd. juſte et ſine dilation.fac. ſectam ſuam ad molendinum* E.*de* N.*in* C. *quam ad illud debet et ſolet,ut dic.ſicut rationabilit. monſtrare poterit,quod eam ad illud facere debet, ne amplius inde clamorem audiamus pro defectu juſtitiæ. Teſte,&c.*

A And if the Writ be ſued in the Common Pleas, the Writ ſhall be thus,

Præcip.A.quod juſte et ſine dilatione faciat ſectam ad molendinum E.de N.in C.quam ad illud facere debet et ſolet ut dicitur, & niſi fecerit &c.tunc ſum.&c.

And

And by the Rule in the Regiſter, a man ſhall have a writ of *Secta*, &c. *quod faciat ſectam ad furnum, et ad thorale, et ad omnia alia hujuſmodi.* And Tenant for life, or in Dower, may maintain this Writ in the *Debet et ſolet*, for this is of the nature of a Writ of the poſſeſſion: but in the *Debet* only, ſeemeth to be in the meer right. And the Defendant ſhall have the view in a *Secta ad molendinum* in the *Debet et ſolet* of Land, &c. of the Mill in which the ſuit is to be done. And the proceſs in a *Secta ad molendinum* ſhall be ſummons, Attachment, and diſtreſs, &c. and if he do appear after default, then ſhall iſſue a *Diſtringas ad audiendum judicium*, and yet he may ſue his default. And you may ſee the form of the Count in this Writ, in the Book of *Entries*, where he counteth upon a Tenure of Land, &c. and another Count, where he counteth upon preſcription: S. that the Tenant, and all thoſe which held thoſe Lands, have uſed to do their ſuit at his Mill, *quod vi. f.* 169.

Quod permittat.

Quod permittat lieth where a man hath Common of paſture for his Cattel, and he is diſturbed by a ſtranger that he cannot uſe his Common, then ſhall he have this Writ: and this Writ may be ſued by Juſtices in the County, or in the Common Pleas; and the form of the Writ is,

27 H. 8. 12. *Rex Vic.* &c. *Præcipimus tibi, quod juſticiet* A. *quod juſt.* &c. *permittat*, B. *hared. communiam paſturæ in* N. *ad centum oves*, &c. vel *ad centum boves*, &c. *quam habere debet, ut dicitur, ſicut rationabiliter*, &c. *ne amplius inde clamorem audiamus.* Vel ſic: *Communiam paſturæ in terra ipſius* A. *quam in ea habere debet*, &c. Vel ſic: *Quod permittat* A. *habere Communiam paſturæ in centum acris ipſius* A.

Vi. 2, H. 4. 13. View grantable in this VVrit, yet it is ſaid 9 E. 3. that the defend. cannot vouch in a *Quod permittat*, for that it is not a *Præcipe quod reddat*. Vi. 45. E. 3. 8. in the view.

And the Rule in the Regiſter is; when Common of Paſture is claimed in the Land of any perſon certain, then the certain number of Cattel are not put in the Writ, &c. but the form of the *Quod permittat* ſued in the Common Pleas is ſuch:

Rex Vic. &c. *Præc.* A. *quod juſte*, &c. *permittat* B. *habere Communiam paſturæ in* N. *at* 40 *acr. boſci, quam habere debet, ut dicit. Et niſi fecerit, ei prædict.* R. *fecerit te*, &c. *tunc ſum.* &c.

And another form of the Writ for common append. thus:

Rex

Rex, Vic. &c. Præc. A. quod juste, &c. permittat B. habere Communiam pasturæ in N. quæ pertinet ad liberum tenementum suum in eadem villa, vel in alia villa, de quo idem A. vel pater præd' A. cujus hæres ipse est, injuste & sine judicio dissaisi. R. patrem pd. B. cujus hæres ipse est, post primam transfretationem Dom. Henr. Regis fil. Regis Johan. in Vasconiam ut dicitur. Et nisi, &c.

Note, This Writ is in the nature of a Writ of Entry upon a disseisin made to his Ancestor,

H And the Rule in the Register is, That the Writ of *Quod permittat* lieth of Common of pasture, Turbary, Piscary, and reasonable Estovers, against a Disseisor of a disseisin made to the Plaintiff of his ancestors, by him and his ancestors, and not in other degrees, because he ought to have a Writ of Right in the *Debet & solet*.

But an Abbot may have a Writ of *Quod permittat* of a disseisin made unto his Predecessor, and shall make mention of the disseisin in his Writ.

I And the form of the Writ *de libera piscaria* is such:

Rex, &c. Præc. A. &c. quod &c. permittat B. habere liberam piscariam in aqua ipsius A. in N. Vel sic, in aqua in N. quam in eo habere debet & solet, ut dicit. Et nisi, &c.

k There is another form of the Writ of *Quod permittat*, in the nature of *Mortdauncestor*, and is such:

Rex, &c. Præc. A. quod, &c. permittat B. hæred. Com. pastor. in N. in qua C. pater, vel mater, vel soror ipsius B. cujus hæres ipse est, fuit seisit. ut de feodo tanquam pertin. ad liberum tenementum suum in eadem villa die quo obiit, ut dicit. & nisi, &c.

3 E. 3. *Quod permit.* 1.

L And if it be a Common in gross, then he ought to put this Clause in the Writ, *tanquam pertinens ad liberum tenementum suum, &c.*

And so a Parson or an Abbot shall have a *Quod permittat* of the seisin of his Predecessor, and the Writ shall say.

31 E. 1. *Quod permittat* 8. 50 E. 3. 1. *Quod permit.* 4. A Prebend had the Writ for measuring of water in the time of his predecessor.

Præc. &c. quod permittat B. personam Ecclesiæ de C. habere Com. pasturæ in N. de quâ R. quondam personâ de C. præd. &c. fuit seisit, ut de jure Ecclesiæ suæ præd. die quo obiit, ut dicit. Et nisi &c.

And the Rule in the Register is, That in the same manner as is said before of Common of pasture, so may it be said of all other Commons, as of Turbary, Piscary, &c.

M And there are divers other Writs of *Quod permittat* of another nature, as a man shall have a *Quod permittat* against the Lord, to suffer his villains to do suit to his Mill, &c. and that accrueth by usage and prescription, and the Writ is,

A *Rex, &c. Præcipe A. quod juste & sine dilatione permittat villanos suos de C. facere sectam ad molendinum B. &c. de E. &c. & nisi &c. Et prædict. B. fecerit &c. tunc sum. &c.*

If the Miller taketh Toll, then Treſpaſs lieth: But if the Tenant of the Frechold take it, a *Quod permittat.* 41 E 3.24. & 44 E.3. ac.

And another Writ: *Præcipe A. quod permittat B. molere dominicum bladum ſuum de N. ad molendinum ipſius A. in N. quietum de multura, qd. ad idem molendinum molere debet et ſolet ut dicit. Et niſi, &c.* Vel, *Præcipe A. &c. quod permittat B. habere aquam ad ſentem ipſius A. in N. ſicut ad illum hab. vire debet et ſolet ut dicit; et niſi, &c.* Vel, *Quod permittat B. adaquare gregem ſuum ad aquam ipſius A. in N. ſicut illam adaquare debet et ſolet, ut dicit.* Vel, *Quod permittat B. habere liberum taurum ſuum in N. ſicut habere debet et ſolet, ut dicit.* Vel, *Quod permittat B. habere quoddam chiminum ultra terram ipſius A. in N. &c.* Vel, *Quod permittat B. habere liberam faldam ſuam in dominicis terris ſuis in I. quam habere debet & ſolet.* Vel, *Quod permittat habere liberam piſcariam in aqua ipſius A. in N. &c.* Vel, *Quod permittat habere liberum paſſagium ultra aquam de Humbr. in navi ipſius A. quod in eo habere debet et ſolet ut dicit, &c. et niſi, &c.* But a man ſhall not have a *Quod permittat de rationabilibus eſtoveris in boſco, vel in turbaria, vel in bruera, et ſimilibus.*

Vi. E.1. Br. Battaile 13 ſex. *Quod permittat.* 9.2. *Quod permittat* brought of Eſtovers.

And the like by the Rule in the Regiſter, for in lieu thereof is given the Writ of Aſſiſe of *Novel Diſſeiſin* by the Statute of *Weſt.2. cap.26.*

And a man ſhall have a Writ *Quod permittat erigere ſcalas in ſola ipſius L. in B. manſa ipſius contigua, pro domibus ſuis eidem quoties fuerit opus conperiend. et reparand. ſicut erigere debet et ſolet, ut dic. & niſi, &c.*

And a man may have a Writ of *Quod permittat* of a Corrodie; as, *Præcipe P. Priori, &c. quod permittat B. habere ſuſtentation. competent. pro ſe & uno garcione in victu & veſtitu, et omnibus aliis neceſſariis, ac pro uno equo in victu ſingulis diebus, ac etiam ſuſtentationem competent. pro quatuor hominibus de com. ejuſdem B. quatuor garcionibus, 4. equis, 4. leporariis, et 4 eſperveriis ſingulis An. ad feſta Natalis Domini Paſch. Pent. et omnium Sanctorum, et per 3 dies poſt quodlibet feſtor. prædict. in Prioratu de C, &c. de qua E. quondam Prior loci prædicti injuſte, &c. diſſ. F. patrem prædicti B. cujus hæres ipſe eſt poſt primam transfretationem, &c.*

30 E.1. *Quod permittat* 10.

And in *Quod permittat habere chiminum*, in the nature of the Writ of Right, and to hold ſuit, and dereign the warrant, &c. and the Defendant came and joyned the miſe upon the meer right, and was received.

Br. Battaile 13.

And in a *Quod permittat* by a Pariſon, he counted *de ſon droit*, and held ſuit, and dereign, &c. and the Tenant came and gaged battail, &c. *tempore Regis E.1.*

4 E 3. 48. *Quod permittat* 7.

And Tenant in Tail ſhall have a *Quod permittat.*

And in a *Quod permittat* of a Common the Tenant al-

ledged

ledged the darrein ſeiſin in the Plaintiff, and it was adjudged a good plea to abate the Writ. But there the Plaintiff counted of the ſeiſin of his Anceſtor; For a man ſhall have a *Quod permittat* of his own ſeiſin, as it ſeemeth.

D And a *Quod permittat ipſum reducer. curſum aquæ*, &c. which is miſturned will well lie. 2 H. 4. 13. 22.

E And a man ſhall have a *Quod permittat* againſt the Tenant of the Freehold for an act done, or a diſturbance done by a ſtranger who was not Tenant of the ſoil.

F And the Proceſs in a *Quod permittat* is Summons Attachment and Diſtreſs: And if the Sheriff at the Summons return *Nihil*, the Plaintiff may pray a *Capias* and have it, *Quod vide H.* 39 *E.* 2. 30 E. 3.

G And the form of a Count in a *Quod permittat* appears in the book of Entries *fol.* 80. on the firſt ſide.

H And if a man build a houſe, or a wall, or other thing which is a Nuſance unto the Freehold of another, and dieth; he to whoſe Nuſance it is ſhall have a Writ of *Quod permittat* againſt his heir that did the Nuſance, and the Writ is ſuch:

Rex Vic' &c. Præcip. A. quod juſte, &c. permittat B. proſternere quandam domum, vel quendam murum, vel quandam ſepem vel quoddam molend. vel foſſatum quem quam vel quod R. pater vel alius anteceſſor. prædict. A. cujus hæres ipſe eſt injuſte & ſine judicio levavit ad nocumentum liberi tenementi C. patris vel alterius antec. prad. A. cujus hæres ipſe eſt in eadem villa vel in alia poſt primam, &c. ut dicit. & niſi fecerit, &c. Vel ſic, *Quod permittat B. exaltare, vel deexaltare quoddam ſtagnum in L. quod prædict. A. injuſte levavit, vel deexaltavit, ad nocument liberi tenementi ſui, vel C. patris prædicti B.* &c. Et ſic, *Quod juſte & ſine permittat B. reducere curſum cujuſdam aquæ in L. in rectum & antiquum curſum ſuum, quem C. mater prad. A. cujus hæres ipſe eſt, divertit, ad nocumentum.* &c. Vel ſic, *Quod juſte, &c. permittat B. deobſtruere quandam viam in N. quam C. pat. prad' A. cujus hæres ipſe eſt injuſte obſtruxit,* &c.

And if a man levy a Nuſance unto the Freehold of another, and he to whom the Nuſance is done maketh a Feoffment in fee of the Land; and he who did the Nuſance maketh a Feoffment of the Land in which the Nuſance is; yet there is a Writ in the Regiſter for the Feoffee of him to whom the Nuſance was levied againſt the Feoffee of the other, to reform that Nuſance, and the Writ is ſuch:

Rex Vic. &c. Præcipe C. quod juſte, &c. permittat B. deobſtruam quandam viam in N. quam C. injuſte & ſine judicio obſtruxit, &c.

But this Writ is not given by the Statute, but may sue, &c. by the Statute, *West. 2. in Casu Consimili*, &c. c. 24.

[125] Or Balliwick 34 E. 1. Br. Demand 43.

And a *Quod permittat* of a Fair or Market shall be sued A in the Common Pleas; and the Writ is such:

Rex Vic' &c. *Si A. fecerit* &c. *tunc sum.* B, &c. *quod sit coram Justic. nostris. ostens. quare levavit quod. Mercatum*, vel, *quandam Feriam in* I. *ad nocumentum liberi mercati*, vel, *liberæ Feriæ ipsius* A. *in eadem villa*, vel, *in alia post primam*, &c. *ut dicit. Et habeas ibi summon.* &c.

And the like Writ for the Heir where the Father doth levy the Market or Fair unto the Nusance of another Fair or Market; or for the Heir against him who levieth the Nusance, &c.

Writ of Admeasurement of Pasture.

THe VWrit of Admeasurement of pasture lieth betwixt B Commoners who have Common appendant to their Freeholds if one of them surcharge the Common by putting in more Cattel in the Common than he ought to have Common for there, then that Commoner who is grieved shall have this Writ of admeasurement of pasture; and by this sute all the Commoners shall be admeasured, as well 2 H. 6. 26. those who have not surcharged the Common, as he who hath surcharged it, and he who bringeth the Action shall be also admeasured.

View in his Action. 3 H. 6 26. Voucher; also 32 E. 3. Voucher 194.

And the Writ is *Vicontiel*, and shall be directed unto the C Sheriff, and shall not be returnable; and the form of the VWrit is such:

Rex Vic. &c. *Questus est nobis* A. *quod* B. *&* C. *uxor ejus injustè supponerauerunt communam pasturæ suæ in N. ita quod in ea plura habent animalia & pecora quam habere debent et ad ipsos pertinet habendum: Et ideo tibi præcipimus, quod justè & sine dilatione admens. fac. pasturam illam, ita quod præd.* B. *& C. non habeant in ea plura animalia & pecora quam habere debent, & ad ipsos pertinet habendum secundum liberum tenementum suum, quod habent in eadem villa. Et quod præd* A. *habeat in pastura illa tot animalia & pecora, quot habere debet, & ad ipsum pertinet habendum, ne amplius inde clam audiamus.*

Note, this Writ is vicontiel, and the Suters are the Judges by 7 E. 4. 25. 18 E. 3. admeasurement 7. a notable case.

And if the Tenant surcharge the Common with his Cat- D tel, &c. the Lord shall not have the Writ of admeasurement against the Tenant; but it seemeth the Lord may distrain the surplusage of the Cattel damage feasant. And some say, That the Lord may have an Assize against the Tenant for the surcharge, for that he is disturbed of the profit of his Land. *Quære* of these Cases. But

But if the Lord ſurcharge the Common, the Tenant ſhall not have a Writ of admeaſurement againſt the Lord, but he ſhall have an Aſſize of Common againſt the Lord. 11 E.2.20.

And ſo if the Lord do make approvement of the Common unto himſelf, and do not leave ſufficient Common to the Tenant, the Tenant ſhall have an Aſſize, and not a Writ of admeaſurement. And he who hath Common appurtenant certain, or Common by grant certain ſhall be admeaſured; And a Tenant ſhall have an admeaſurement againſt him; but he who hath a Common appurtenant without number, or Common in groſs without number, ſhall not be ſtinted, nor a Writ of admeaſurement doth not lie againſt him. See 179. E 126. D. E.

E And in the time of *E.*1. it was agreed, That one neighbour ſhall have a Writ of admeaſurement againſt another where they enter-common, by reaſon of Neighbourhood.

F And if the Sheriff will not make the admeaſurement, he ſhall have an *Alias* and *Pluries, vel cauſam Nobis ſignificet.* And if he do not return the *Pluries*, he ſhall have Attachment againſt the Sheriff. And the plea may be removed out of the County by a *Pone* at the ſuit of the Plaintiff without ſhewing cauſe in the Writ. But at the ſuit of the Defend. he ought to ſhew cauſe in the Writ: and the writ of *Pone* is ſuch:

Pone ad petitionem partis coram Juſtic. &c. tali die loquelam quæ eſt in Com. tuo. per breve noſtrum inter A. & B. de com. paſtura in N. admenſurandâ, & ſum. &c. prænd. B. quod tunc ſit ibi præf. A. inde reſponſurus, &c. & habeas, &c. hoc breve, & aliud breve.

G And upon this Writ of admeaſurement, the Plaintiff ſhall enter his plaint into the County before the Sheriff, as he ſhall do in a Replevin ſued by Writ, and upon that the Sheriff ſhall make a Warrant againſt the Defendant, &c. and warn him to appear; and if he come and plead nothing in bar, or grant it, then the Sheriff ſhall make the admeaſurement. 7 E.4.22. Danby.

In a Writ of admeaſurement brought againſt one of Common in *D.* the Defendant ſaid that he had Lands in *B.* and *S.* to which he had Common in the ſaid place, and yet the Writ good, for it is holden there that the ouſter of the ſurcharge ſhall not be but in the ſame place only, yet it ſeemeth all the Common ſhall be admeaſured, *Temp. E.* 1. *Admeaſ.* 15.

But if the Defendant ſhew cauſe unto the Sheriff wherefore the admeaſurement ſhould not be made, then the Sheriff ought not to make admeaſurement upon this Writ; but the Plaintiff ought to remove the plea by a *Pone* into the

Common Pleas, by which *Fone* the Defendant shall have day for to appear, &c. And if he appear not, then shall issue a *Distringas* directed to the Sheriff to distrain the party; and such day shall be given by that Writ, that two Counties may be kept between the date of the Writ and the return, and in the Counties Proclamation shall be made, that he come and shew cause why the Admeasurement should not be made. And if he do not come at the return of the *Distringas*, then a Writ shall be awarded unto the Sheriff to make the Admeasurement by his default; and that is given by the Statute of *West.* 2. *cap.* 8. and the Writ is:

Rex Vic. &c. *Cum A. nuper nobis queslus est quod B. & C. injuste superoneraverunt communiam pasturæ suæ in N. ita quod in ea plura habent animalia & pecora quam habere debent & ad ipsos pertinet habendum: Per quod tibi præcipimus, quod juste & sine dilatione admensurari fac. pasturam illam, ita quod prædict. B. & C. non habeant in ea plura animalia & pecora quam habere debent, & ad ipsos pertinet habendum secundum liberum tenementum suum in eadem villa. Et quod prædict. A. habeat in pastura illa tot animalia & pecor. quot. habe. debet, & ad ipsum pertin. habend.* &c. *ne amplius,* &c. *ac te nihil inde facias, sicut ex querela ipsius A. accepimus, cum in brevi nostro de admensura postea statuerimus quod post magn. distriction. dentur dies infra quos duo Com. teneant. ad quos proclametur, quod reus veniat ad hoc ut reddere.* [126] *Al quem diem non venerit fiat admensur. per defaltam: Tibi præcipimus, sicut alias tibi præceper. quod just. & sine dilatione admensur. fac. postea. antedicti. juxta tenorem alterius brevis nostri tibi inde recti, & juxta formam ejus ut nostri inde provis. & edit. nepraf. A. oporteat nos super hoc iteratum sol. citari Teste* &c.

And when the plea is removed by *Fone* in the Common Pleas, and the Plaintiff appears and the Defendant, then the Plaintiff shall count against the Defendant, and see the form of the count in the book of Entries *fol.* 122.

And if the Defendant do grant to have the admeasurement, a Writ shall issue out to the Sheriff to make admeasurement, which shall be such:

Rex Vic. &c. *Præcipimus tibi, quod assumptis tecum* 12, &c. *per quos,* &c. *qui nec,* &c. *in propria persona tua accedas ad communiam pasturæ admensurandum & per eorum sacramentum admensurandum fac. communiam pasturæ prædicti. ita qd. prædict. S. & C. def. non habeant plura,* &c. *& ad ipsos pertinet non habend. secundum liberum tenementum suum, quod habent in eadem villa. Et quod prædict. R. habeat in pastura illa tot animalia & pecora, quod habere debet, & ad ipsum pertinet habere secundum*

liberum

liberum tenementum ſuum, quod habet in eadem villa, et admenſurat. quam, &c. ſcire faciat coram Juſtic. noſtris, &c. ſub ſigillo tuo, et ſingulis eorum, &c.

C After the *Pone* returned to remove the plea out of the County: if the Defendant make default at the day of the return of the Writ, then ſhall iſſue a Writ to the Sheriff to diſtrain the Defendant, and in the Writ ſhall be contained that he make open Proclamation in two Counties, &c. that the Defendant come into the Common Pleas at the day of the return of the *Diſtringas* to anſwer to the Plaintiff, &c. And if the Sheriff return the Writ ſerved; and the Defendant doth not come, then ſhall iſſue a Writ to the Sheriff to make the admeaſurement.

D And it appeareth by the Book of Entries, *fol.* 123. That a Writ of admeaſurement doth not lie againſt the Lord of the Soil. See 125. D.

E And if a man be once admeaſured by a Writ of admeaſurement directed unto the Sheriff by the Sheriff, &c. and afterwards he ſurchargeth the Common again, then the party who ſued the firſt Writ, ſhall have a Writ to the Sheriff, called a Writ *De Secunda Superoneratione*; and the Writ is ſuch: 11 E. 3. 20. Admeaſurement 7. ac. and there holden that it lieth not againſt the Feoffee of the Lord of the part of the demeſns, ſo that the Feoffee is in the ſame degree as the Lord himſelf. 8 E. 2. Admeaſurement 14. in admeaſurement of Paſture the Defendant ſaid that the Demandant pendant the Writ had ejected him of the Common, and no plea, for notwithſtanding that he had not the Common, he held the Land for which the Common is ſurcharged.

Rex Vic. &c. Monſtravit nobis A. quod cum ipſe breve noſtrum nuper ſibi detuliſſet de communia paſturæ ſuæ in N. admenſurandum quam B. injuſtè ſuperoneravit. Et tu paſt. ill. per præceptum noſtrum, prout moris eſt in regno noſtro admenſ. &c. idem B. paſturam illam poſt admenſuram prædict. injuſte ſuperoner. in ipſius A. diſpendium non modicum et gravamen, et contra formam ſtat. noſtri ſuper hoc proviſ. Et quia eidem A. juxta formam ejuſdem ſtatut. ſubvenire volumus, ut tenemur: Tibi præcipimus, quod tu in propria perſona tua accedas ad paſturam illam, et per ſacramentum proborum et legalium hominum de balliva tua, per quos rei veritas melius ſciri poterit, de ſecunda ſuper, neratione juſdem paſturæ diligenter inquir. Et ſi per inquiſitionem illam paſturam ill. per præf. B. poſt admenſ. iterum injuſtè ſuperoneratam inveneris, tunc de averiis illis paſtur. ill. ultra debit. numer. poſt primam admenſ. poſitus, vel de pretio illor. mihi reſpondeas ad Scaccarium, et ſuperoneration. amoveas ſup. Teſte, &c.

And it appeareth by this VVrit, that a man shall have a VVrit *De Superoneratione* upon the first VVrit of admeasurement of Pasture, which is *vicontiel* and directed to the Sheriff; if the Sheriff make admeasurement upon that Writ, and afterwards the Defendants surcharge the Common again as well as upon a Writ of admeasurement awarded out of the Commom Pleas upon a Judgment there given, &c. But upon the Writ of admeasurement awarded to the Sheriff, by which he maketh admeasurement, if the Defendant surcharge the Common after the Writ of *Secunda Superoneratione* shall be awarded out of the Chancery: But upon a Judgment given in the Common Pleas of admeasurement, &c. if the Defendant surcharge the Common, the VVrit of *Secunda Superoneratione* shall be awarded out of the Common Pleas And the form of the Count in a Writ of admeasurement is such:

8 E. 4. 22.

Et unde prædict. querens queritur, quod cum ipse seisit. sit de uno messuag. cum pertin. in S. ad quod idem querens habet & habere debet communiam pasturæ cum quatuor equis, in centum acris pastur. vocat. B. quolibet ann. per totum annum pertin. Et prad. def. seisit. existit in dominico suo ut de feod. de quatuor virgat. terræ cum pertin. in eadem villa. ad quas idem defend. habet & habere debet communiam pasturæ cum centum equis, & 20 bobus &c. quolibet ann. per totum annum pertin. prad. defend. injustè superoneravit commun. pastur. prad. vocat. B. ita quod in ea plura habet animalia & pecora quam habere debet, & ad ipsum pertinet habere, unde dicit quod deteriorat. est, & damnum habet ad 20 li. & petit admensur.

And by the Writ of *Secunda Superonerationē* the Plaintiff shall recover his damages against him that was Defendant in the first Writ, and also he shall forfeit unto the King the Cattel which he put in over the due number after the admeasurement made. And all this is by the Statute of *West.* 2. 1.

9 H. 6. 26.

And note, That by the Writ of admeasurement all the Commoners shall be admeasured as well as those who were parties to the Writ. But yet if any of those who are Commoners which were not parties to the VVrits of admeasurement &c. do surcharge the Common after Admeasurement, they shall not forfeit their Cattel, nor the value of them that were in the Pasture above the due number, because they were not parties to the first VVrit, nor the party shall not recover damages against them for this surcharge in this VVrit. For the Writ of *Secunda Superenerationē* doth not lie but only against him, against whom the first VVrit was sued

Writ de Reparatione faciendâ.

A THe Writ *de Reparatione faciendâ* lieth in divers caſes, one is, where there are three Tenants in Common or Joynt, or *pro indiviſo* of a Mill or a Houſe, &c. which falls to decay, and one will repair, but the others will not repair the ſame, he ſhall have this VVrit againſt them; and the VVrit is ſuch:

B *Rex Vic.* &c. *Si A. fecerit,* &c. *tunc ſum.* &c. B. *et* C. *quod ſint* &c. *oſtenſur. quare cum iidem* A. B. *et* C. *quoddam molendinum in* N. *pro indiviſ. teneant, et ipſi exitus inde provenientes pro equali portione inde percipiant, et ad reparationem et ſuſtent. ejuſdem molendini teneant. ac iidem* B. *et* C. *licet portionem de exitibus illis ipſos contingent. percipiant, reparationi tamen et ſuſtentationi prædicti molendini contribuere contrad. in ipſius* A. *dampn. non modicum et gravam. ut dicit, et habeas ibi ſum.* &c.

C And ſo if a man have a Houſe adjoyning to my Houſe, and he ſuffer his Houſe to lie in decay to the annoyance of my Houſe, I ſhall have a Writ againſt him to repair his Houſe in ſuch form:

Præcipe A. *quod* &c. *reparari fac. quandam domum ſuam in* N. *quæ minat. ruinam ad nocumentum liberi tenementi* B. *in eadem villa, quæ reparari debet et ſolet, ut dicit.* &c. *et niſi,* &c.

D And ſo if I have a paſſage over a Bridge, and another ought to repair the Bridge, and he ſuffer the ſame to fall to decay, I ſhall have a VVrit againſt him in this form:

Rex, &c. *Præcipe* A. *quod,* &c. *reparari faciat una cum* B. *et* C. *particip. ſuis pontem vel quoddam ſtagnum in* N. *quem vel quod cum eis reparation. debet ut dicit, et niſi,* &c. vel ſic, *quendam pontem, vel quoddam ſtagnum qui vel quod dirut. vel diruptum eſt, ad nocument. liberi tenement.* B. *in eadem villa, quem vel quod facere debet et ſolet,* &c. *ut dicit,* vel ſic, *reparari fac. cum* B. *et* C. *particip. ſuis foſſata et molliæ in* N. *quæ diruta ſunt ad nocumentum liberi tenementi* B. *et* C. *quæ vel quæ cum eis reparare debet et ſolet ut dicit,* &c.

E And if any Bridge or VVall, or Sewer be broken unto the annoyance of the Country, upon a ſurmiſe made by any perſon thereof in the Chancery that certain perſons ought to repair the ſame, he ſhall have a VVrit unto the Sheriff to diſtrain ſuch perſons to repair the ſame. But it appeareth by the Regiſter, That the King ſhall ſend his Commiſſion to the Sheriff, to enquire who ought to make ſuch Bridge, and

and that he diſtrain them to make the ſame, and repair it. But by the Statute of 28 *E.* 3. *cap.* 9. A Commiſſion ſhall not be made unto the Sheriff to take an Indictment; and the King may ſend unto the Sheriff to diſtrain thoſe perſons who ought to make or repair ſuch a way, or Cauſey, or pavement, and upon it an *Alias* and *Pluries*, if it be not done, and an Attachment upon the ſame; And if the Bridge or way be in the Confines of the County, he ſhall have ſeveral Writs unto every Sheriff to diſtrain them in their Bailiwicks, that they with the men in the other Counties ſhall make and repair the Bridges and ways, &c.

And there is another Writ in the Regiſter in the title of the Writ of *Ex gravi querela*, thus:

Rex Majori &c. Vic. de A. *ſalutem, Ex part.* W. *nobis oſtenſum quod cum ipſe habeat quoddam ſelarium cum pertin. in præd' villa de* A. *ac habeat quoddam ſelarium cum pertin. in eadem villa deſuper ſelarium prædictum dirutum et confractum, ad nocumentum ſelarii ipſius* W. *& per præf.* I. *ſecundum conſuetudinem ville prædreparar. debeat, idem tamen* I. *ſelarium illud reparari contradicit, prout dicit ad grave dampnum ipſius* W. *& contra conſuetudinem prædictam: Et quia noluerat, quod idem* W. *injurietur in hac parte: Vobis præcipimus, quod vocatis coram vobis partibus prædictis audit iſque hinc inde rationibus, eidem* W. *in præmiſſ. fieri fac. debitum et feſtinum juſtitiæ complementum, prout de jur. & ſecundum conſuet. &c.*

And thereupon the Mayor and Sheriffs, or Bailiffs ſhall proceed, and award proceſs againſt the parties; and if they will not do it, he may have an *Alias* and a *Pluries*, and Attachment againſt the Mayor and Bailiffs.

Writ de Curia claudenda, and for repairing of Hedges.

11 R. 2. *Curia Claudend.* 5. L. 5. E. 3. 100. It ought to be in the *Debet* and *Solet*, and the Tenant for life ſhall have the Writ. 2 H. 4. 11.

THe Writ of *Curia claudenda* may be ſued before the Sheriff in the County, and then the Writ is ſuch: G

Rex Vic. &c. Juſticies A *quod juſte &c. claud. curiam ſuam in* N. *quæ aperta eſt ad nocumentum liberi tenementi* B. *in eadem villa, vel in alia villa, quam claudere debet & ſolet ut dicit. ſicut rationabiliter monſtrare poterit, quam eam claudere debeat, ne amplius, &c.*

And this Writ lieth where one ought for to encloſe his H Land from his Neighbour, and will not do it, he ſhall have this Writ; and the Writ may be ſued in the Common Pleas, and then the Writ is ſuch:

Rex

I *Rex &c. Præcipit* A. *quod juste, &c. claudat Curiam suam in* N. *quæ aperta est, ad nocumentum Liberi tenementi.* (usque ibi) *&c. debet et solet. Et nisi, &c.*

L. 5 E. 4. 118. 11 H. 4. a man shall have this Writ before he be damnified. *Quia tunc.* 27 H. 6. *Curia Claud.* Nonentre is a good plea in this Writ.

A And this Writ may be removed out of the County at the suit of the Plaintiff without cause, and at the suit of the Defendant he ought to shew cause in the Writ, and in the end of the Writ shall be this clause: *Fiat executio brevis, &c. si causa sit vera, aliter non.* [128]

16 H. 7. 9. Per Fineux the Judgment is to recover the Inclosure and damages.

B And the *Curia claudenda* doth not lie but against him who hath a Close adjoyning unto the Plaintiffs Land, and it doth not lie but for him who hath a Freehold in the Land, for Tenant for years shall not have this Writ, and the view lieth in this Writ.

22 H. 6, 7, 8. 22 E. 4. *Curia claud.* 38 H. 6. 18. &c.

C But it seemeth that if a man have Common in a great waste to him and his heirs, or for life, and he who hath the Land adjoyning unto the waste and soil, and who ought to enclose, enter into the waste, and will not make his enclosure, yet the Commoner shall not have this Action for the damages which he sustaineth, &c. although the Commoner may distrain the Cattel damage feasant in the Land, which is his Common, for the Writ doth suppose *Ad Nocumentum Liberi tent.* of the Plaintiff, which proveth that the Plaintiff ought to have the Soil adjoyning, if he have the D Action.

13 R. 2. *Curia claud.* 3. 12 H. 8. 2. 24 E. 3. 4. 15 H. 7. 13. 5 H. 7. 2. 22 H. 6. 9.

And the process in this Writ is Summons, Attachment and Distress, and if he do appear and afterwards make default he shall have a *Distringas* in the place of a *Petit Cape*, &c. And if he make default at the day of the return of that Writ, he shall have a Writ to enquire of Damages, and also E a Writ to distrain him to make the reparations, &c. And in this Writ in his Count he ought to shew the certainty of the Land which the Plaintiff hath adjoyning unto the Defendant, and the certainty of the Land which the Defendant hath there adjoyning which he ought to enclose. And to alledge a prescription of the Enclosure, &c. as appeareth in the Count in the Book of Entries. *fol.* 32. So it is holden 22 H. 6. 8. for if it be by Indenture or Composition, then he shall be put to his Writ of Covenant.

22 E. 4. Issue 127. 10 E. 47. 13 R. 2. *Curia claud.* 3.

29 H. 6. 31 Dy.

Writ

Writ of Quo Jure.

THe VVrit of *Quo Jure*, where a man hath Lands in Fee, and another claimeth Common in that Land, then he who oweth that Land shall have this VVrit against that Commoner who claimeth the Common, and the form of the Writ is such: P

7 H. 4. 12. it is a good plea to say that he hath nothing in the Lands in which he claimeth Common.

Rex Vic. &c. Si A. fecerit, &c. tunc sum. &c. B. quod sit, &c. G *ostens. quo jure exigit &c. communiam pasturæ in terra ipsius A. sicut idem A. null. habet communiam in terra ipsius B. nec idem B. servitium faciat, quare communiam in terra ipsius A. habere debet, ut dicit, et habeas inde, &c.*

And this Writ lieth for the Lord of a Town, or of a H waste, or for any other Tenant who claimeth Common in his Land: although he be not Lord of the waste, nor the Town.

And this Writ is a Writ of right in its nature, for when I the Plaintiff hath declared in this VVrit, the Tenant shall make defence and set out his title to their Common, and alledge seisin thereof, and the Esplees, *Et quod tale sit, jus suum offert*, &c. as the Demandant shall do in a VVrit of Right, and then the Plaintiff in the *Quo jure* shall make defence, and deny the seisin alledged by the Defendant, and joyn the Mise upon the meer Right, or by Battail, and see the Count and the form of pleading in a *Quo jure*, *Lib. Ent.* 96. and 80.

And in a *Quo jure* brought by two, Summons and Severance lieth, and the Nonsuit of the one shall not be the Nonsuit of the other. And this *Quo jure* lieth against several Tenants, as it appeareth, *H.* 24. *b.* 3. But in that case they shall, it seemeth, make several Defences, and make several Titles, and joyn the *Mise* severally. And the view shall be granted in this VVrit. And the process in this VVrit is Summons, Attachment and Distress, and after appearance if the Defendant make default, a grand Distress shall issue out in the place of *Petit Cape*, &c. L

Writ

Writ de Rationabilibus Divisis.

M THe Writ *de Rationabilibus Divisis*, is in its nature a Writ of Right. And lieth properly where two men have Lands in divers Towns or Hamlets, so that the one is seised of the Land in one Town or Hamlet, and the other of the Land in the other Town and Hamlet by himself; and they do not know the Bounds of the Towns or Hamlets, which is the Land of one, and which is the Land of the other. Then to set the Bounds in certain, this VVrit lieth for the one against the other; and the form of the VVrit is such:

N *Rex Vic', &c. Præcip. tibi quod justè & sine dilatione fac. esse rationabiles divisas inter terram A. de B. in C. et terram D. de E. in F. sicut esse debent & solent, unde idem A. querit. quod præd. D. plus inde trahit ad feodum suum, quam ad ipsum pertinet habend. ne amplius, &c. Teste, &c.*

O And this VVrit lieth for Tenant in Fee-simple, and against Tenant for life, and in this VVrit the Tenant for life shall have aid of him in the Reversion, and they may joyn the Mise in this VVrit, and it shall be tried by the grand Assize, as other VVrits of Right shall be.

P And this Writ is *Vicontiel*, and may be determined by the Sheriff; For the Plaintiff in this Writ shall make his plaint before the Sheriff, in nature of a Count, and upon the same the Sheriff shall make a Precept to warn the Defendant, and when he cometh the Plaintiff shall count, and the Defendant shall answer the same in the County, &c. and if he deny it, then the Sheriff shall make the division and partition of the Land between them by certain meres and bounds.

Q But if the Defendant will plead and joyn the Mise upon the meer Right, and put himself on the grand Assize, then the Plaintiff ought to remove the same by a *Pone*, without cause, and the Defendant may remove it with cause, as it is said in other VVrits. And the Count in this Writ is in this form:

R *Et idem A. modo venit et dicit quod cum rationabili et vell. divisas esse debent, inter terram prædictam N, &c. & S. et terram ipsius A. et B. divisis prædict. incipient. versus* Boream *in quadam loco vocato* K. *et sic directe versus* Austrum *in longitudinem per* L. *usque* E. *ultra quas divisas prædict. as N, &c. nihil habere debet versus* Occidentem, *idem* N, &c. *ultra divis. prædict. traxerit ad feodum suum in* S. *de terra ipsius A.*

traxerit.

[129] *tracent, arras mora et pastura.* &c. *Unde idem A. dicit quod quidam W. super pat. suum fuit seisitus in dominico suo ut de feodo per dimissionem ad terminum temper. pacis tempore,* &c. *capiend. inde explet.* &c. *ad valenc. et quod tale sit, jus suum offert.* &c. And the Tenant may joyn the Mise by Battail or by grand Assise, &c.

And divers Tenants in common of a Town or Manor may have this Action against him who is Tenant of another Town adjoyning, and they shall Count one Count, and shall make their several titles in that Count, and shall alledge the Especes severally in the same Count. Which see in the book of Entries, fol. 167.

And the Defendant shall make his defence several against every one of them, or may wage Battail or joyn the Mise at his pleasure, and then the Plaintiffs shall reply thereunto and recite anew their Count, and alledge the Especes as before, and then to joyn the Mise with the Tenant upon the meer Right, or by Battail at the pleasure of the Tenant. And if they do joyn the Mise in the County before the Sheriff, by Battail it shall be determined there, but not by the grand Assise, &c. And it seemeth, that Tenant in tail, nor a Parson of a Church, nor Tenant for life shall not have this Writ, for he ought to have his Estate in fee who maintaineth this Writ, and Summons and Severance lieth in this Writ, and the view shall be granted in this Writ. And Joyntenancy or Coparcenary is a good plea in this Writ, and the Writ may be brought against several Tenants, who have Tenements in severalty or in common in the other Town.

Writ Ex parte talis.

Note, 13 R. 2. Firz. Accompt 51. upon this Writ of *Ex parte talis*, the Barons of the Exchequer use to allow an Averm. that the Plaint. in the Writ hath paid the money by the commandment of the owner, or such special matter, without writing or Tally of the same.

THe Writ of *Ex parte talis* lieth where Auditors are assigned unto a Bailiff or Receiver to accompt, and the Auditors will not allow unto the Bailiff or Receiver his reasonable allowances, which they ought to do, but commit him to prison; he who is so imprisoned shall have this Writ *Ex parte talis*, &c. But if a man bring a Writ of accompt, and Auditors are assigned unto him who is Bailiff or Receiver, to take his accompt, and they will not allow him his allowances which they ought to do, &c. he shall not have this Writ of *Ex parte talis* nor any other remedy in that case, for he may shew the same to the Justices, and they shall relieve him.

And

G And if a plea of accompt be ſued in *London* againſt a Receiver, &c. or in other Court of Record, and the party appear, and Auditors are aſſigned him by the Court, and they will not allow unto him ſuch allowances which he thinketh they ought to do, he ſhall have a Writ of *Ex parte talis*, and the Writ is ſuch:

Rex, &c. *Ex parte A. cujus ſit diviſus in priſona noſtra* Lond. *pro arreragiis compoti ſui, in quibus B. aſſerit ipſum ad tunc de tempore quo fuit ballivus ſuus in M. non eſſe oſtenſum quod auditores compoti prædicti per ipſum B. ad hoc deputati, in ſuam A. ſuper hoc compoto in debitæ gravationem, nec auditi ſuper dictis receptis, quæ non recepit, vel non allocando ei reprisas & liberationes rationabiles, &c. ipſius A. dampnum non modicum & gravamen. Et quia videmus, quod eidem A. juſtitia in hac parte fieri debet, ſi præmiſſa ita ſint, &c. Tibi præcipimus, quod ſi præfatus B. te inde ſecerit ſecurum, tunc auditores compoti illius ſuſcipi, & invenerint ibi ſumm. manuſcript. quæ non manuſcripta habebis coram Theſaurario & Baronibus noſtris in Scaccario noſtro, ad reddendum præfat. B. computum ſuum juxta formam ſtatuti de compoto conſilio regio noſtro inde proviſi, cum ipſum A. à priſona prædicta, ſi &c. ſciſtum & inde diſtringat. In cujus, &c. Alioquin ſit per manucaptionem. Teſte, &c. Et ſcire fac. prædict. B. quod tunc ſit ibi coram eis, &c. ad allocand. quæ prædict. A. computum ſuum præmiſſum, ad ſuſcipiendum & recipiendum ea quæ de jure & conſuetudine regni ſui & ſtatuti prædictum fieri oportebit, & habeas ibi nomina manucaptorum illius & hoc breve. Teſte, &c. Vide Stat. inde Weſtm. 2. cap. 11.*

H And this Writ ſhall be returnable before the Treaſurer and Barons of the Exchequer at a certain day, as it appeareth by the Writ.

I And if a man have Auditors aſſigned him in *London* by the party who taketh the accompt, and will not allow his Tallies or other things to be allowed, but commit him to priſon; and becauſe he is a ſtranger in the City he cannot find ſureties to bail him to ſue his Writ of *Ex parte talis*, &c. then he may ſend unto the Chancellor, and ſurmiſe in the Chancery, that he is ſtaied before the King there, and thereupon he ſhall have a Writ unto the Sheriff of *London* out of the Chancery, rehearſing the matter, and how that he hath found ſureties there, according to the Statute, commanding the Sheriff to deliver him out of priſon, and the Writ ſhall be ſuch:

Rex Vic' Lond. &c. *Ex parte* A, &c. (ut ſupra uſque ibi) *non modicum et gravamen. Et quia idem* A. *forinſecus eſt in Civitate noſtra* Lond. *et ignotus, per quod manucaptores de eadem*

eadem Civitate invenire non potest de bonis, ipsum coram Thesaurario et Baronibus nostris de Scaccario ad reddend. computum suum praedictum et ad faciendum ulterius et recipiendum quod Curia nostra consideraverit in premiss. cessante alias mandato quam de Civitate ab eadem A. amoveri possit, ac idem B. sufficiens mandatum coram nobis in Cancellar. nostr. invenerit viz. C. D. et E. de com. Eborac. quem cum mandatum habere coram Thesaurario vel ejus locumtenente et Baronibus nostris de Scaccario in quind. Paschae, proxim. futur. ad recitandum ibidem computum suum praedict. et ad stand. rect. in premiss. faciendum formam statut. de consensu consilii regni nostri inde provisi Vobis mandamus, quod ipsum A. à prisona praedicta, si [130] ea occasione et non alia detineatur in eadem interim deliberari fac. per manucaptores praedict. Et sic fac. praedict. B. quod tunc sit &c. per quos praedict. A. computum suum prius reddit. coram praedictis et ad faciendum et recipiendum quod justum fuerit, &c. consonum ratione. Et habeas ibi hoc Breve, &c.

And if he do remain in prison, he may sue the *Ex parte talis* returnable before the Treasurer and Barons of the Exchequer, and thereupon he may have another VVrit out of the Chancery directed unto the Treasurer and Barons of the *Exchequer*, that they take sureties of him who is in prison according unto the form of the Statute, and that they deliver him out of prison, and shall have another VVrit unto the Gaoler, that he send his Body before the Treasurer and Barons of the Exchequer, and that he deliver the Body when the Treasurer and Barons send him a VVrit so to do, &c. which VVrit appeareth in the Register.

And if a man be committed to prison by Auditors for arrearages of his accompt, and afterwards escape out of prison, the Gaoler shall satisfie the party at whose suit he was committed, and the Gaoler shall have a special action upon the Case upon the prisoner to answer the escape and the damages which the Gaoler hath sustained, which VVrit is among the VVrits of *Ex parte talis* in the Register; But it seems reasonable that the Gaoler may take the party again, and so is the opinion of some Books.

VI. 6 H. 7. 11, & 12. 10 H. 7. 25. 13 E. 4. 9. 14 H. 7.

Writ of Execution upon a Statute Merchant.

A Writ of Execution upon a Statute Merchant lieth in caſe, where a man is bounden in a Statute Merchant before any Mayor or Bailiff of a Corporate Town, who have power to take ſuch Bonds or Recogniſances, to pay a certain ſum of money at a day at which day he doth not pay the ſame, then he to whom the Obligation or Recogniſance is made, may come before the Mayor, or him before whom the Bond or Recogniſance was taken, and pray him to certifie the ſame into the Chancery under his ſeal according unto the Statute of *Acton Burnel*, and if he will not certifie the ſame as he ought to do, then the Recogniſee may have ſuch Writ directed unto the Mayor:

But if a Statute Merchant be acknowledged to one who is abſent it ſhall not bind, the Commiſſion if it be not delivered to the Commiſſee, as it ſeemeth by 20 E. 3. Fitz. accompt. 79.

Rex dilectis ſibi Majori Linc. *& T. Clerico ad recognitionem debitorum apud* L. *accipiendum deputatis ſalut. Ex parte* I. *nobis eſt oſtenſum, quod cum* R. *ann. regni noſtri decimo, coram* W. *nuper Majore villa* Linc. *& H. nunc Clerico ad hujuſmodi recognitiones in eadem villa accipiendas deputato, recognoviſſet ſe debere præfat.* 24. l. *juxta formam ſtatuti dudum apud* Acton Burnel *pro mercator. editi, certis terminis ſolvend. & licet termini ſolutionis prædict. jam diu ſunt elapſi, idemque* I. *vos ſæpius requiſierit, ut nos in Cancellar. noſtra de recogn. prædict. juxta formam ſtatut. præd. certificaretis, & vos tamen nos in Cancellar. noſtra præd. ſuper recognitione præd. hucuſque certificar. diſtuliſtis, & adhuc differtis, unde quam plurimum admiramur Vobis mandamus quod ſcrutatis rotulis de hujuſmodi recognit. cor. præf. W. & H. ann. præd. factis in cuſtodia veſtra, ut dicitur, exiſtentibus, ſi inveneritis recogn. præd. in forma præd. fact. fuiſſe & terminos ſolutionis præd. elapſos fuiſſe, & nos in Cancellar. noſtra alias inde certificat. non fuiſſe, tunc nos in eadem Cancellar. ſuper recognitione præd. diſtincte & aperte, juxta formam ſtatuti præd. ſub ſigillo pro recognitione mercatorum ibidem deputatis certificetis ut ulterius ſuper hoc fieri faciamus, quod ſecundum formam prædicti ſtatut. fuer. faciendum.*

And if he will not certifie by this Writ, he may ſue an *Alias* and a *Pluries* and Attachment againſt the Mayor and Clerk, and it appeareth by this Writ, that if an Obligation be once certified in the Chancery it ought not to be certified again without *Affidavit* made, that execution was not ſued upon it, and then he ſhall have a ſpecial Writ unto the Mayor for it, for then it ſhall be taken a ſeveral Obligation upon every Certificate,

And alſo it ought to be certified under the Seal of him E
who is deputed to ſeal the Obligation. And if the Mayor do F
make his Certificate unto the Chancery, then the party ſhall have a Writ to execute the Statute, thus:

Rex Vic. Linc. *ſalut. Quia* A. *de* B. *coram* C. *& de* C. *clericis ad recognit. debitorum apud* L. *accipiend. deputat.* vel ſic, *coram* D. *Majore:* vel ſic, *coram* L. *nuper Majore Civitatis noſtræ* Linc. *& de* C. *Clerico, vel, tunc Clerico ad recognitionem debitorum apud* L. *accipiend. deput. recognovit ſe debere* E. 10. *libras quas ei ſolviſſe debuiſſet ad feſtum, &c. ann. &c. & eas ei nondum ſolvit, ut dicitur; Tibi præcipimus, quod corpus prædict.* A. *ſi laicus ſit, capias, & in priſona noſtra ſalvo cuſtodir. facias, donec eidem* E. *de prædicto debito vel execution. teſtamenti prædict.* E. *de prædict.* 10. *l.* plene *ſatisfecerit. Et qualiter hoc præceptum noſtrum fuerit execut. nobis ſcire facias in* Octabis S. Hill. *ubicunque, &c. per literas tuas figillat. & habeas,* &c.

And this Writ may be returned as well into the common H
Pleas as Kings-Bench. And if a man make a Statute Mer- I
chant of 100*l.* payable at divers days, if he fail of payment
[131] at any of the ſaid days, the Recogniſee ſhall ſue execution at that day, and ſhall not ſtay his execution untill all the days are paſt, as he ſhall do of an Obligation.

Contrary in Covenant or if he aſſent to pay, by 5 *Ma.* 107. 32 *H.* 6. *cont.* 14 *H.* 8. 14. *Brudenell.*

If a man be bound to pay 20*l.* at divers days, he ſhall not have an Action of Debt upon the bond, until all the days are paſt. But if he who is bounden in a Statute Merchant be a Clerk or Abbot, *&c.* then the Writ of Execution is of another form, *viz.*

Rex. &c. *quia* A. *perſona Eccleſiæ de* B. *coram* &c. *præcipimus tibi quod prædict.* 10. *l. de bonis & catallis ipſius* A. *in balliva tua mobilibus ſine dilatione levari, & eund.* E. *habere fac. Et qualiter hoc præceptum,* &c.

For a Clerk ſhall not be arreſted by his body upon that Statute, and if proceſs be awarded to arreſt him, by that ſtatute he ſhall have a Writ unto the Sheriff, that he do not trouble or moleſt him, and if he have arreſted him for the ſame, that he deliver him, if he know no cauſe why he ſhould not enjoy the privilege of a Clerk: And in ſome ſuch Writ there is a proviſo put in the end of the Writ, thus:

Proviſo quod prad. decem liber. de terr. bonis & catallis ipſius A. *ſi non levata fuer. juxta formam ſtatuti prædict. levantur, ut eſt juſtum,* &c. *Teſte,* &c.

If a man be bounden in a Statute Merchant in 20*l.* and J
the Statute at the ſuit of the Recogniſee is certified in the Chancery, and afterwards he dieth, his Executors may have a ſpecial Writ unto the Mayor, reciting the Certificate

ficate before them, commanding them to certifie the ſame again into the Chancery, and the Writ is ſuch:

Monſtraver. nobis L. *&* W. *execut. teſtament.* L. *de* B. *quod cum* R. *&c.* (ut ſupra uſque ibi) *juxta formam ſtatuti prad. certificaretis: vos tamen pro eo quod per rotulos veſtros inveniſtis quod Cancellar. noſtra ſuper eadem recognition. alias eſſet certific. quicquid inde facer. non curaſtis, ac praf. execut. coram nobis in Cancellar. noſtra perſonaliter conſtituti aſſeruerunt, aliquam execut. recognit. pradict. in vita ipſius* L. *ſeu poſt mortem ſuam virtute certificat. inde in Cancell. prius fact. nullatenus fact. fuiſſe, & nobis ſupplicaver. ut ſibi in hac parte velimus de remedio providere. Et qui eiſdem execut. quatenus juſte poterimus in hac parte velimus ſubvenire, vobis mandamus, quod ſcrutat. rotul. veſtr. hujuſmodi recognit. contingent. ſi inverenit. recognit. illam in forma pradicta factam fuiſſe, & terminos ſolution. tranſactos eſſe, ut eſt dictum, tunc nos in Cancellaria noſtra ſuper recognit. prad. diſtincte & aperte ſub ſigillis veſtris pro recogn. debitorum ibidem deputat. prout moris eſt, certificetis, non obſtante Cancellar. noſtra prius inde extitit. certificata. Teſte,* &c.

C But this Writ is not granted but upon Affidavit and oath made by the Executors in Chancery, or by him who would have that Execution.

Writ of Execution upon a Statute Staple.

D AND if a man be bounden before the Mayor of the Staple in a certain ſum, to pay at a certain day, *&c.* and he do not pay it according to the Statute; then he to whom the Obligation is made, ſhall come before the Mayor and ſhew him the Statute, and pray him to certifie it under the ſeal into the Chancery, as he ſhall do upon a Statute Merchant. Or the Mayor may award Execution if the party be dwelling within his juriſdiction, or have Lands or goods there, *&c.* And if the Mayor will not certifie at the requeſt of the party, then he ſhall have a Writ out of the Chancery unto the Mayor to certifie the ſame, as he ſhall have upon a Statute-Merchant ſhewed in Chancery; and upon the ſame an *Alias*, and a *Pluries*, and Attachment againſt the Mayor if need be; and when the Mayor hath certified the Statute under the Seal, then the Writ of Execution ſhall iſſue forth againſt the party, to arreſt him, and to extend his Lands, *&c.* and this Writ ſhall be always returnable in the Chancery, and not in the King's-Bench nor Common Pleas, as the writ which iſſueth forth to do execution upon a Statute-Merchant, and the form of the Writ is ſuch:

Ve. 45 E. 3. 22. Finchden. Execution ſhall be ſued firſt of the goods, and then of the lands. But 7 R. 2. Execution. 46. the party hath his Election to take one or the other, and ſo is the uſe at this day.

Rex Vic. Linc. ſalut. Quia R. de W. *xx. de Septembr. & ann. &c. coram* E. *de* B. *Majore ſtapul. noſtr. de* B. *ad recogn. debitor. in eadem Stapula accipiend. deputat. recognovit ſe debere* W. *de* F. *octo libr. &c. quas ei ſolviſſe debuit in Feſto &c. tunc &c. Et quas ei nondum ſolvit, ut dic. Tibi præcipimus quod corpus prad.* R. *ſi laicus ſit cap. & in priſona noſtra donec eidem* W. *de prad. debito plene ſatisfecerit, ſalvo cuſtod. & omnia terras & catall. ipſius* R. *in balliva tua per ſacrament. proborum & legalium hominum de balliva prad. quo rei veritas melius ſciri poterit juxta rerum valorem eorund. diligent. extendi & appreciar. & in manum noſtram ſeiſiri fac. & ea præf.* W. *quouſque ſibi de debit. prad. ſatisfact. fuer. libert. ac juxt. form. ordination. inde fact. Et qualit. hoc precept. noſtrum fuerit execut. ſcire fac. nobis in Cancell. noſtr. in Craſtin. animarum proxim. futuro ubicunque tunc fuerit per literas tuas ſigillatas, & habeas ibi hoc breve,* &c.

And by this Writ it appeareth that the Sheriff may arreſt the Conuſor, and extend and take his Lands, Goods and Chattels, and return the ſame extent in Chancery, &c. And thereupon the Conuſee may ſue a Writ unto the Sheriff out of the Chancery to deliver him the lands and goods to the value of the Debt, which Writ is called *Liberate*, and is ſuch:

[132] *Rex Vic. &c. Cum* R. *de* W. *xx. die* (uſque ibi) *per literas tuas ſigillatas*, & tunc ſic: *Ac tu nobis returnaſti, quod prad.* R. *non fuit inventus in balliva tua, poſtquam breve noſtr. tibi liberat. fuit, ſed quod cepiſti in manus noſtr. omnia terras & tenementa & catalla ipſius* R. *in dicta ball. tua, & ea extendi & appreciari feciſti juxta tenorem brevis noſtri prad. viz. duas partes unius meſſuagii, quæ appreciant. ad quinq; libras, Tibi præcipimus, quod eidem* A. *omnia terras & tenementa, & catall. prad. per te in manus noſtras ſic capta, ſi ea per extent. & apprec. prad. habere valuerit, liberes, habend. juxta form. ordination. prad. quouſq; ſibi de debito prad. fuer ſatisfact. Et qualiter hoc præceptum noſtrum fuerit execut. ſcire fac. in Cancell. noſtra in quinden. Paſcha proxim. futur. ubicunq; tunc fuerit per literas,* &c. *Et habeas,* &c.

And if a man be bounden before the Mayor of the Staple, or in a Statute Merchant before another Mayor, &c. and have no Lands but in *Durham*, or other County Palatine, Then upon the Certificate of the Statute made by the Mayor, &c. upon the Return of the Sheriff, that he hath not Lands nor tenements within his Bailywick, the party may ſurmiſe that he hath not any thing but in the County Palatine, &c. and pray that the Tenor of the Record may be ſent thither, to have execution done, and upon that ſurmiſe he ſhall have ſuch Writ.

8 E. 4. 10.

Writ to do Execution in a County Palatine.

REx venerabili in Chriſto patri I. *eadem grat. Dunelm. Epiſc. vel ejus Canc. in Epiſcopatu prad. ſalut. &c. Tenore cujuſdam ſtatuti de ſtapula facti coram* W. *de* W. *nuper Majore ſtapul.* Weſtm. *ad recognitiones debitorum in eadem ſtapula accipiend. deput. de* xl. *li.* T. *de* W. *jam defunct. ut dicit, &* E. *de* R. *civ.* Lond. *per Agnetem quæ fuit uxor* H. *de* R. *Epiſcopat. Dunelm. nuper recognitis, & per* N. B. *nunc Major. dict. ſtapula in Canc. noſtram miſſi: vobis mittimus præſentibus interclusum, ut inſpecto tenore prad. ulterius ad proſecutionem Katharinæ quæ fuit uxor præfat.* T. I. F. *& R. de* L. *executor. teſtamenti prad.* T. *executionem recognitionis prad. fieri fac. prout de jure & ſecund. legem & conſuetud. regni Angl. fuerit faciend. Teſte, &c.*

B And if the Statute be not ſufficiently certified in the Chancery by the Mayor, *&c.* becauſe he hath omitted any part of the Bond, as the Name, or Sur-name, or other matter material, then upon Affidavit made, that he hath not had execution by reaſon of that Certificate, he ſhall have a new Writ unto the Mayor and Clerk, *&c.* to certifie the Statute fully again into the Chancery, notwithſtanding his Certificate made before, and that Writ doth appear in the Regiſter.

Note, 2 R. 3. 7. 3. ſeveral Certificates were made upon one Statute. But it cannot be intended but that they were three ſeveral Statutes. And note, That ſeveral writs were awarded upon them to ſeveral Sheriffs.

If the Mayor doth make a Certificate of the Statute into the Chancery, and delivereth the ſame unto the Recogniſee, and the party keepeth the Certificate, and will not put it into the Chancery; and afterwards another is made Chancellor, the party ought to have a new Certificate to that Chancellor, otherwiſe he ſhall not have execution of the Statute upon that Certificate made to the old Chancellor which was not delivered in time into the Chancery: and then he ought to ſue a Writ in Chancery directed unto the Mayor, to make a new Certificate, and the Writ ſhall be ſuch:

Rex, &c. Majori Stapula Weſtmon. ad recognitiones debitorum in eadem ſtapula accipiend. deput. ſalut. Ex parte D. *&c. nobis eſt oſtenſ. quod cum* W. *de* E. *&c. ann. regni noſtri tertio coram vobis in ſtapula prad. recogn. ſe debere præſ.* A. xl. *li. juxta formam ſtatuti ſtapula prad. cert. termin. ſolvend. & licet vos termino ſolution. prad. elapſo* K. *Epiſc.* London. *nuper Cancellar. noſtro dum in officio Canc. fuerit, ſub ſigillo officii veſtri, prout moris eſt, certificaveritis, quia tamen prad.* D. *dictam certificat. penes ſe hucuſque retinuit. & præſ.* R. *nuper Canc. cui prius nominatim inde certificaſtis, ab officio ſuo Canc. à diu eſt & extitit onerat. Volumus, & vobis mandamus, quod dicta certific. præſ. nuper Canc. per vos ſic fac. ſane & integr.*

integr. vobis restit. & scrutatis rotulis de hujusmodi recognitione coram vobis ann. præd. factis, si inveneritis recognition. præd. factam fuisse, tunc Canc. nostro moderno in eadem Canc. super recogn. præd. distinct. & apert. juxta form. stat. præd. sub sigillo pro recognitionibus stapulæ præd. deputat. certific. indilatè, ut ulterius super hoc fieri faciamus, quod secundum formam statuti præd. fuer. faciend. dicta certific. prius sic facta non obstante. Teste, &c.

But note, That if in the first Certificate he hath not expressed the name of the Chancellor, that then he may deliver that Certificate to the new Chancellor, and sue execution upon it, and therefore it is good to make the Certificate general to the Chancellor without naming his name.

Recognisance in the County before the Sheriff.

IF a man do acknowledge in the County before the Sheriff, to pay to another a certain sum of money at a day certain, and do not pay it at the day, then the Recognisee shall have a Writ out of the Chancery unto the Sheriff, com-
[133] manding him to do execution upon that Recognisance, and the Writ shall be such:

Rex Vic. &c. *Monstravit nobis* A. *quod cum ipse implacitasset in Com. tuo per brev. nostrum* B. *& idem* B. *in pleno Com. illo recognovit se debere præf.* A. *certam pecuniam ad certum terminum reddend. ita tamen termino illo elapso, eandem pecuniam eidem* A. *nondum solutam ad querimoniam secundum recognitionem suam habere non fecisti, in ipsius* A. *damnum non modicum & gravamen. Et quia eid.* A. *prout justum fuerit subvenire volent. in hac parte. Tibi præcipimus, quod si ita est, tunc pecuniam illam de bonis & catallis ipsius* B. *in ballivâ tua levari, & illa præf.* A. *fine dilatione habere fac. ne clamor ad nos inde perveniat iteratus. Teste*, &c.

But it seemeth Recognisance shall be made when a plea is depending in the County before the Sheriff by Writ between the parties in debt, &c. but if there be not any plea depending in the County by Writ, but by plaint. *Quære*, If that Recognisance shall be made; and it seemeth reasonable that it may be taken, as well when the plea of debt is depending in the County before the Sheriff by plaint, as if it were by the King's Writ.

But if a man will come into the County before the Sheriff, and there in Court acknowledge to pay a certain sum of money unto another at a certain day, &c. where there is not any plaint or action depending, betwixt the parties, whether this acknowledgment shall be good or not, *Quære*. And it seems

ſeems reaſonable; That if it be under the ſum of 40 ſhillings, that ſuch acknowledgment ſhall be good, and bind the party:

B And if the party have a Writ to the Sheriff to do execution of ſuch Recogniſee (as before is ſaid) and the Sheriff will not do the ſame, then the Recogniſee may ſue an *Alias* and a *Pluries*, and attachment againſt the Sheriff, and the form of the Writ is ſuch:

Rex, &c. *Ex parte* A. *accepimus, quod cum nuper tibi præceperimus, quod ſi* B. *recognoſceret ſe debere* A. *tantum, tunc ipſum* B. *diſtringeres ad præd. debit. eidem* A. *ſine dilatione reddend. ac licet idem* B. *coram te recognoverit ſe debere præf.* B. *præd. debit. tamen ipſum* B. *ad debitum illud reddend. diſtringer. hactenus diſtuliſti, & adhuc differs, in ipſius* A. *damnum non modicum & gravamen: Et ideo tibi præcipimus, quod ſi ita eſt, tunc execution. recognitionis ſine dilatione fieri fac. juxta tenorem mandati noſtri præd. & hoc nullo modo omittas. Teſte*, &c.

But it ſeemeth by this Writ, that if the Recogniſor will not again acknowledge the debt before the Sheriff when he cometh to him to do execution, *&c.* but ſay that he hath paid the ſame, That then the Sheriff ought not to do execution. And there is another Writ in this form:

Rex Vic. &c. *Præcip. ibi, quod ſi* A. *recognovit ſe debere* B. *centum ſolid. tunc ipſum* A. *diſtr. ad præd. debitum eidem* B. *redd.*

And he may have an *Alias* and a *Pluries* and *Attachment* upon the ſame, *&c.* And if the Sheriff return upon the *Alias*; *quod diſtrinxit partem per frument. vel per alia catall. ad quod non invenit emptores.* Then by the title of the Regiſter ſhall be awarded a Writ of *Pluries reiterand.* returnable, *& illud inſuffic. reputand.* &c. But *Quare tamen* of that; for it ſeemeth to be a good return: and *Quare* if the Sheriff may ſell the goods to pay the Recogniſance, for it ſeemeth by the Regiſter he may ſell the parties goods.

C And if a man be in Execution upon a Statute Merchant, he ought to be found in Priſon for the rents and revenues of his Lands which are in *Execution*, &c. that is to ſay, with bread and water, as appeareth by the Statute; and if he have not the ſame, he may ſue a Writ upon the Statute directed to the Mayor and Sheriff, where he is in Execution, that he have the livelihood which the Statute giveth him, and the Writ is ſuch:

Rex Majori & Vic. Lon. ſalut. Cum in ſtatuto de Mercator. edito contineat. quod mercatores pro quorum debitis contigerit debitores ſuos per formam ſtatut. prædict. arreſtari & impriſonari, invenire teneantur debitoribus illis in priſona commorant. panem & aquam ad ſuſtentationem ſuam. Vobis præcipimus, ad.

W. de S. pro debit. E. de K. per formam ſtatut. noſtri prad. ut dicitur arreſtat. & in priſona noſtra detent. ſi ea occaſione & non alia detineatur in eadem, fieri fac. in hoc caſu, quod fuerit faciend. & in caſu conſimili fieri conſuet. juxta form. Statuti prad. T. &c.
And upon that he may have an *Alias, Pluries, & Attachment.*

Writ de Perambulatione facienda.

A Writ de *Perambulatione facienda*, ought to be ſued with the aſſent of both Parties, where they are in doubt of the bounds of their Lordſhips, or of their Towns. Then they by aſſent may ſue this Writ, directed unto the Sheriff to make the Perambulation, and to ſet the Bounds and Limits between them in certainty: and the Writ is ſuch; D

Rex Vic. &c. Præcipimus tibi, quod aſſumpt. tecum 12. diſcretis & legal. Milit. in com. tuo, in propria perſona tua accedas ad terram A. de B. in N. & terram C. de D. in E. & per eorum ſacramentum fieri fac. perambulat. inter terram ipſius A. in N. & terram ipſius C. de D. in E. ita qd. perambulat. illa fiat per certas metas & diviſas: quia prædiſt. A. & C. poſuerunt ſe coram nobis in perambulationem illam; & ſcire fac. Juſtic. noſtris apud W. &c. tali die, vel Juſtic. ad primam aſſiſ. &c. ſub ſigillo ſuo & ſigillis quatuor legal. Milit. ex illis qua perambulat. illi interfuer. per quas metas & diviſas perambulatio illa facta fuerit, & habeas ibi nomina Militum, & hoc breve.

And the King may make his Commiſſion to other perſons A to make that Perambulation, as well as to the Sheriff, and to certifie the ſame into the Common Pleas, or in the Chancery, or elſewhere, &c. And ſuch Commiſſion is oftentimes granted to make perambulation of three or four Counties where they are in doubt in the Bounds and Limits thereof; 29 E. 3. 58. and this perambulation made by aſſent, ſhall bind all the parties and their heirs.

But if Tenant for life be of a Seigniory, and another who B is Tenant in Fee-ſimple of another Seigniory adjoyning ſue forth ſuch a Writ or Commiſſion, by reaſon whereof a Perambulation is made, it ſeemeth the ſame ſhall not bind him in Reverſion; neither ſhall the Perambulation made with the aſſent of Tenant in tail bind his Heir.

And the Perambulation may be made for divers Towns, C and in divers Counties, and the parties ought to come in perſon into the Chancery, and there acknowledge and grant that a Perambulation be made betwixt them, and the acknowledgment ſhall be enrolled in the Chancery, and thereupon a Commiſſion or Writ ſhall iſſue forth. And if the Parties

Parties cannot come in Chancery, then they ought to ſue forth a Writ of *Dedimus poteſtatem* directed to certain perſons, to take their acknowledgment, and to certifie the ſame into the Chancery under his ſeal, *&c.* and then upon that Certificate returned into the Chancery, That Commiſſion or Writ may be granted, although the parties do not appear in perſon in Chancery to pray the ſame.

Writ de Warrantia Chartæ.

D THE Writ of *Warrantia Chartæ* lieth properly where a man doth enfeoffee another by deed, and bindeth him and his heirs to *warranty*, &c. Now if the Defendant be impleaded in an Aſſize, or in a Writ of Entry in the nature of an Aſſize, in which actions he cannot vouch, then he ſhall have that writ againſt the Feoffor or his heir, who made ſuch warranty: and the Writ is,

In a *Warran. Chartæ*, the Defendant ſaid that he had a Formedon pendant of the Land and no plt. and that was againſt the iſſue in tail. 11 lin. North 2. E. 3. Garr. de charters 13. 2 E. 2. Ib. 6.

E *Rex*, &c. *Præc.* A. *qd. juſte*, &c. *warrant.* B. *unum meſuag. cum pertin. in* D. *qd. tenet, & de eo tenere clam. & unde chartam ſuam habet, ut dicit.* &c. Vel ſic: *Manerium de* N. *cum pertin. & advocat. Eccleſiæ ejuſdem villa quam tenet*, &c. (uſque ibi) *unde chartam ſuam habet, vel chartam* D. *patris vel matris vel alterius anteceſſoris, cujus hæres ipſe eſt, ut dicit & niſi*, &c.

2 Tenants in Common ſhall joyn this Writ. 28 E. 3. 90. ſo where 3. are joyntenants, and a Releaſe to the other 2, 40 E. 3. 41, 42. 16 H. 7. 6, 7. If the Defendant tender a Plea to the Plaintiff, and the Plaintiff will not enter it; he ſhall not have advantage in this Writ.

And although the Writ doth ſuppoſe that he holdeth of the Defendant, yet that is not material whether he holdeth of him or not.

F And alſo that the Plaintiff holdeth any Land of the Defendant by Homage *Auncеſtrel*, and hath not a Charter thereof: yet he ſhall have this Writ of *Warrantia Chartæ* againſt the Defendant, and the Writ ſhall ſay *unde Chartam habet*, &c. and yet he hath no deed to ſhew, but onely ſhall hold by Homage *Auncеſtrel*, which implieth a warranty, and therefore in that caſe, thoſe words, *Unde chartam habet*, &c. are not material.

5 Eliz. Dy. 221. If the warranty be only againſt the Grantee and his heirs, and there be not *Dedi & Conceſſi* in the Charter *per Curiam*, the Writ lieth not. 12 H. 3. Garr. de Charters. 27. One brought this Writ. *Unde Chartam ſuam habet*; the defendant ſaid, *Non habet Chartam ſuam*, and the Plaintiff confeſſed the ſame, and ſaid it was *Charta anteceſſoris ſui* adjudged for the Defendant.

If

21 H. 6. 8. upon ouelty of Service, this Writ lyeth: but that is after seisin of the Services.

If a man have a Leafe of Lands for life rendring Rent, or maketh a gift in tail rendring Rent without deed, and afterwards the Leſſee or Donee is impleaded in ſuch action where he cannot vouch, then he ſhall have this Writ of *Warrantia Chartæ* againſt the Leſſor or Donor, or his Heir who hath the Reverſion: for that Reverſion and Rent reſerved, maketh a warranty in it ſelf by the Statute of *Bigamis, cap. ult.* although he hath not any deed thereof.

21 H 6 8. Upon a Feoffment in Fee with warranty, he ought in his County to ſet forth the deed, 14 E. 3. 35. acc.

And if a man give Lands to one in Fee by deed by theſe words, *Dedi, Conceſſi*, &c. now he is bound to warrant the Lands unto the Feoffee by thoſe words, and if the Feoffee be impleaded, he ſhall have a Writ of *Warrantia Chartæ* againſt the Feoffor, by theſe words, *Dedi, Conceſſi*, &c. but not againſt his heir, for the heir ſhall not be bounden unto a warranty made by his Father, unleſs he bind him and his heirs to warranty by expreſs words in the deed: as to ſay, *Ego & hæred. mei omnia prad. terras*, &c. *warrantizabimus*, &c.

In a *Precipe quod reddat*, where the Tenant hath a Releaſe or Confirmation with warranty for

But note, That he ſhall not have the Writ of *Warrantia Chartæ* againſt the Feoffor, or againſt him againſt whom he hath the warranty, if he be impleaded in any action in which he may vouch him, for then he ought to vouch him to warranty; and if he will not vouch him to action, he ſhall not afterwards have a writ of *Warrantia Chartæ*.

doubt the poſſeſſion ſhall be counterpleaded, he ſhall have this Writ, Wood and Brian. 12 H. 7. 2.

And a man may ſue forth this writ of *Warrantia Chartæ* before he be impleaded in any action, but yet the writ doth ſuppoſe that he is impleaded: and if the Defendant appear and ſay that he is not impleaded. By that Plea he confeſſeth the warranty, and the Plaintiff ſhall have Judgment to recover his warranty, ſo as if the Defendant be after impleaded, and vouch him to warranty, and he entreth into the warranty, and pleadeth and looſeth, and that the Defendant recover in value. The Defendant ſhall have ſin value of the Lands againſt the Vouchee, which he had at the time of the purchaſe of his *Warrantia Chartæ*, and therefore it is good policy to bring his *Warrantia Chartæ* againſt him before he be ſued, to bind the Lands of the Vouchee which he had at that time. For if a man be vouched, he ſhall not render in

21 H. 6. 41. 22 H. 6. 22. 30 H. 7. 7.

2 H. 4. 14. & 12 H. 4. 12. he ſhall have in value the Lands which he had at the

value at the time of Judgment: for the Judgment makes them ſubject to the Execution. 11 H. 4. 11. Fitz. Garr. de charter 2 ac. 8 E. 2 Voucher, 237. A man cannot vouch Clerk attainer, or a man outlawed: but ſhall rather have *Warrant. Chart. cont. &c.* Idiot *quod reddat. Quære* if it be Law at this day. Br. Warr. Chart. 29. 8 E. 4. 15. Markham acc. 24 E. 3. *B. Warran. Chart*, 13. acc. 19. E. 3. Garr. Chart. 7. acc.

value, but of the Lands which he had at the time of the Vouchee, and if he have aliened the Lands before the Voucher, he ſhall render nothing in value; and therefore it is policy to bring his *Warrantia Charta* againſt him when he hath the Land to render in value. And upon this Writ and Judgment, the Land ſhall be bound. But if a man recover his warranty by writ of *Warrantia Charta*, and hath bounden the Land which the Vouchee had at that time: yet if he be afterwards impleaded for that Land, for which he recovered his warranty, he ought to vouch him againſt whom he recovered his warranty, to defend the Land, if he be ſued in any action wherein he may vouch, otherwiſe he ſhall not have advantage by recovery of his warranty in the *Warrantia Charta*.

A And if a man recover his warranty in a *Warrantia Chartæ*, and afterwards is impleaded in an action in which he cannot vouch, as by Aſſize, or by *Scire facias* ſued forth upon a fine, &c. It ſeemeth he ought to give notice to him againſt whom he hath recovered his warranty of the action, and to pray him to ſhew him what he ſhall plead for to defend the Land, &c. *Quære tamen* thereof.

B If a man exchange Lands with another by deed, if he be impleaded, he may vouch him with whom the Exchange was made, by reaſon of that exchange; and alſo he ſhall have a writ of *Warrantia Charta* by that deed of exchange, although there are not words of warranty in the deed; and the Vouchee ſhall have a writ of *Warrantia Chartæ, tamen Quære* of that.

C And if a man be impleaded who is not Tenant of the Land, but perhor of the profits, he ſhall not have a Writ of D *Warrantia Chartæ*, becauſe he can loſe nothing. And a man ſhall have a Writ of *Warrantia Chartæ* although he may vouch in the action brought againſt him, and if he do recover in the *Warrantia Chartæ*, and afterwards loſe in the action brought againſt him, in which he hath vouched him againſt whom he recovered his warranty, Then he ſhall have a writ which is called *Habere facias ad valentiam*, &c. preſently within the year after the recovery, and ſhall not ſue forth *Scire facias*. And an aſſignee ſhall have a Writ of *Warrantia Chartæ*.

E And a man ſhall have a writ of *Warrantia Chartæ* of Land or Rent which he demanded againſt him out of Land, &c. but there he ought to vouch of Land diſcharged of the Rent, &c. if he may vouch in the action.

F And a man may bring his writ of *Warrantia Chartæ* in what County he pleaſeth, if the deed bear not date in a certain place, or County: for then he ought to bring the writ where the deed beareth date. But if a man bring a writ of

Warrantia

23 H. 3. Gar. Charters 26.

7 H. 4. 28. 17 E. 3. and Br. War. ch. 30. None ſhall have the writ but the *Terre*-Tenant 24 E. 3. 25. *Willbye* 7 E. 4. 22.

3 E. 4. 7. A good plea that he had nothing in the Land *jour de briefe* purchaſe. 19 E. 3. Gar. ch. 10. 4 E. 3. Gar. ch. 12. acc. for Rent ſervice.

Warrantia Charta, by reaſon of Homage *Auncestrel*, &c. then it ought to be brought in the County where the Land lieth.

E. 1. Voucher, 266. 21 H. 6. 40. *Newton.* See *Littleton*, 111. for the reaſon of this caſe.

And if a man doth enfeoffee another of Lands by deed with warranty, if the feoffee maketh a Feoffment over, and taketh back an Eſtate in Fee, the warranty is determined, and he ſhall not have a writ of *Warrantia Charta*, becauſe he is in of another Eſtate. And ſo if *A.* diſſeiſe *B.* and enfeoff *C.* with warranty who enfeofteth D. with warranty, upon whom a ſtranger entreth, in whoſe poſſeſſion *B.* the Diſſeiſee releaſeth his Right, all the warranties are extinct, and if *D.* re-enter, and be impleaded, he ſhall not have a writ of *Warrantia Charta*, becauſe he is in of another Eſtate by wrong. But if a man be impleaded for which he purchaſeth a writ of *Warrantia Charta* againſt whom he hath a warranty, and vouch him alſo in the action; and afterwards depending the action, a ſtranger who hath ancienter title entreth upon him, yet that ſhall not abate his *Warrantia Charta* ſued out before, *quod ve. 21 H. 6.*

4 E. 2. Gar. Charters 29. It is but a perſonal action in the Nature of a Covenant, therefore he ſhall recover damages. 2 H. 6. 21. It is holden, that in this caſe he ſhall recover damages onely. But it ſeemeth by Br. Warr. chart. 31. that if he hath no Land to be recovered in value, that he ſhall not recover damages *tantum*, nor more than in voucher.

If a man be impleaded in Aſſize, *&c.* and he bring a writ of *Warrantia Charta*, and Country, that he is impleaded by Aſſize, *&c.* and that he hath loſt, *&c.* If the Plaintiff recover his warranty, he ſhall recover his damages, and alſo to have the value of the Land loſt.

And a man may ſue forth divers Writs of warranty of Charters againſt divers men: and if he have divers warranties againſt them, he ſhall recover ſeverally againſt them.

And a man may ſue a Writ of *Warrantia Charta* at the Common Law for a warranty made of Lands in ancient demeſne.

And if a man have a writ of *Warrantia Charta* depending, although that the Plaintiff who brought the action againſt him, who wrought the *Warrantia Charta* be Nonſuit in his action, the ſame ſhall not abate the writ of *Warrantia Charta*, although he hath not an action ſued againſt him for the Land, *&c.*

Writ de Meſne.

18 H. 3. *Meſne*, 78. adjudged that the *Meſne* ought to acquit the Tenant againſt all Lords Paramount, 29. E. 3. 34. acc.

THE Writ of *Meſne* lieth where there is Lord, Meſne, and Tenant, and each hold by Owelty of Service, as by Homage, Fealty, and 20 *l.* Rent yearly. Now if the Tenant be diſtrained by the Lord Paramount for the Rent

or Service of the *Meſne* behind, he ſhall have a writ of *Meſne* againſt the Lord who is *Meſne*, and by the writ he ſhall recover his damages if he be diſtrained, otherwiſe not: and by that writ he ſhall be compelled to do the Service, and to pay the Rents: and the writ may be ſued in the County before the Sheriff, and the writ is ſuch:

Rex Vic, &c. *Præcipimus tibi, quod Juſtic. A. qd. juſte*, &c. *acquietet* B. *de ſervic. quæ* C. *ab eo exigit de libero tenemento ſuo qd. de præf.* A. *tenet in* I. *& unde querit. qd. pro defectu ejus diſtrin. ſicut rationabil. monſtrare poterit, quod eum acquietar. debeat, ne amplius*, &c.

Note, that the Plaintiff in a Writ of *Meſne* needeth not in his Court to ſhew the certainty of the Tenure between the *Meſne* and the Lord Paramount, but generally to ſay, that he holdeth over, per 38 H. 6. 12. and 39 H. 6. 29. 13 E. 4. 6. If there be Lord, *Meſne*, and Tenant, and the Tenant is diſtrained by the Lord for which he bringeth a *Replevin*, the Lord avoweth upon a ſtranger; The Tenant may have a Writ of *Meſne*: yet the *Meſne* cannot joyn becauſe the avowry is made upon a ſtranger.

And if it be ſued in the Common Pleas, the Writ is: *Rex Vic'*, &c. *Præc.* A. *qd. juſte*, &c. *acquietet.* B. *de ſervic. qd. nos ab eo exigimus de libero tenemento*, &c. *unde idem* A. *qui medius eſt inter nos & præf.* B. *eum acquietare debet, & unde queritur, quod pro defectu ejus diſtringit. & niſi*, &c.

And this writ is where the King diſtraineth for ſervices, *&c.*

And if another perſon be Lord Paramount, then the writ is; *Quod acquietet* B. *&c. quæ* C. *de eo exigit de libero tenemento*, &c. *unde idem* A. *qui medius eſt inter* C. *& præf.* B. *eum acquietare debet*, &c.

And the Writ of *Meſne* may be ſued and removed out of the County, at the ſute of the Plaintiff by a *Pone* without cauſe, and at the ſuit of the Defendant with cauſe ſhewed, as in a *Replevin*. [136]

And a man may have an acquittal, and ſue forth a writ of *Meſne* upon it divers ways. One if the *Meſne* grant unto his Tenant by his deed, upon his Tenure made of him to acquit him againſt his Lord Paramount, he ſhall have a writ of *Meſne* upon that Grant. Another cauſe of acquittal is, where he holdeth in Frankalmoigne. Another cauſe is, where he holdeth in Frankmarriage; or where he holdeth by the like Service as the *Meſne* holdeth over, which is called Owelty. 14 E. 3. *Meſne* 7. 38 H. 6. 12. 39 H. 6. 29. Priſoit.

And alſo a man may have an acquittal by preſcription, as if he hold by Homage *Auncеſtrel*.

And alſo by Conuſance in a Court of Record for to acquit him, *&c.* And the men of *Cornwall* claim to plead a

Plea

Plea in a Writ of *Meſne* in the County without writ, and that they have had allowance thereof in Eyre. And although the writ of *Meſne* be depending betwixt the *Meſne* and the Tenant paravail, yet the Lord ſhall diſtrain the Tenant paravail for the Rents and Services, and he ſhall not tarry until the writ of *Meſne* be ended betwixt them, whether he ought for to acquit the Tenant or no.

7 H. 4. 12. And if a man bring a writ of *Meſne* where he is not diſtrained, yet the writ is maintainable, but then he ſhall not recover damages: for the writ is brought onely for to recover the acquittal, *&c.* As if he bring a writ of warranty of Charters where he is impleaded, *&c.* he is to recover the warranty *pro loco & tempore.*

4 H. 6. 25. 4 E. 4. 35. 21 H. 4. 55. And if the Tenant holdeth by the Services which the *Meſne* holdeth over, and alſo by other Services, it is a good owelty to have acquittal, becauſe it is ſuch, and more. And although that the Lord dieth depending the writ of *Meſne*, yet the writ ſhall not abate.

25 H. 6. *Meſne* 12. And Tenant for term of life where the remainder is over in Fee, ſhall have a writ of *Meſne* againſt the *Meſne*: but Tenant for life ſhall not have a writ of *Meſne* againſt him in the Reverſion. But Tenant in Dower ſhall have a writ of *Meſne* againſt him in the Reverſion, becauſe ſhe hath her Eſtate by the Law.

38 H. 6. 12. Priſot. 50 E. 3. 23. And if the *Meſne* have paid the Services unto the Lord Paramount, yet if the Tenant be afterwards diſtrained for thoſe Services, he ſhall have a writ of *Meſne*. But it is a queſtion whether he ſhall recover damages in that writ. But it ſeemeth he ſhall have damages, becauſe the *Meſne* ſhall recover damages againſt the Lord, if he will put his Cattel in the Pound for the Tenant, and ſue a *Replevin*, &c. and yet not diſtrained, in his default is a good Plea in a writ of *Meſne*. And if he pay the Services, he is not diſtrained in his default: for if the *Meſne* grant unto the Tenant to acquit him alſo the Tenure made, he ſhall have a writ of *Meſne* thereupon, as I conceive.

4 E. 4. 35. Billing. acc. 14 E. 3. Meſne 8. And the Husband and Wife ſhall have a writ of *Meſne* where they are diſtrained for the Lands of the wife.

22 E. 3. Meſne 12. 20 E. 3. 58. Ibid. 21. 8 E. 3. 26. Meſne 19. If the *Meſne* grant the Meſnalty for life, and the Tenant attorn, the Tenant ſhall not have a writ of *Meſne* againſt the Grantee for life. But Tenant in tail ſhall have a writ of *Meſne*: and ancient Demeſne is a good Plea in a writ of *Meſne*.

40 E. 3. 7. And a writ of *Meſne* lieth againſt Tenant for life where the remainder is over in Fee: and the writ of *Meſne* ſhall be maintainable againſt the Heir of the Meſne where his anceſtor

[illegible]ers have granted the Services of the Tenant by fine, [illegible] Tenant hath not attorned according to the fine: for [illegible] not be compelled to attorn without granting acquittal unto him: and if he grant acquittal, *&c.* he ſhall have a writ of *Meſne* upon the Grant; and yet it commenceth after the Tenour. 39 H. 6. 29.

M And if the Tenant be diſtrained for the relief of the Meſne, or for reaſonable aid, *&c.* he ſhall have a Writ of *Meſne* againſt him. 38 E. 3. 34.

If a man be Tenant by the curteſie of a Meſnalty, *&c.* if the Tenant be diſtrained, the Writ of *Meſne* ſhall be ſued againſt him in the Reverſion, and not againſt the Tenant by the curteſie. H. 4. E. 2.

O A Seigniory is granted unto the Husband and Wife, and to the Heirs of the Huſband, and in a *Per quæ ſervitia* ſued by them, the Tenant will not attorn, unleſs they will grant to acquit him, *&c.* for which the Husband grants for him and his Heirs, to acquit the tenant and his Heirs, and afterwards the Husband dieth; the Tenant may bring a Writ of *Meſne* againſt the Husband's Heir, during the life of the Wife who was Tenant for life, and good. *Quod Ve.* H. 5. E. 3. Meſn. 52. Meſne 58.

P And in the time of E. 1. the Tenant brought a writ of *Meſne*, becauſe he did not acquit him of a Rent charge demanded, *&c.* becauſe he by his Deed bound him and his Heirs to warrant and acquit him, and it was maintainable.

Q And an Abbot ſued a writ of *Meſne*, by reaſon of the confirmation made unto him in *Frankalmoigne*, and it was maintainable. H. 2. E. 2. 5 E. 2. Meſne 64.

R If a man have Judgment to recover his acquittal in a writ of *Meſne*, if he be not afterwards acquitted, he ſhall have upon the Recovery a *Diſtringas ad acquietandum* againſt the Meſne, if it be three or ten years after the Judgment given; and that is given by the Statute of *Weſtmin.* 2. cap. 9. And a *Scire facias* againſt the Lord. 14 E. 3. Meſne 7.

S If the Meſne do acknowledge acquittal by fine, and after he ſueth a *Scire facias* thereupon, and he appeareth not at the return of the writ, then ſhall iſſue a writ of *Diſtringas ad acquietandum*, &c. and an *Alias & Pluries*, &c. untill he appear; and if he come upon the *Diſtringas*, and cannot plead any thing, but that he ought for to acquit him, then the Plaintiff ſhall recover damages againſt him.

T And if the Auncеſtor do acknowledge an acquittal in a Court of Record, the Tenant ſhall have a *Scire facias* againſt the Heir to acquit him without other ſpecialty, *&c.* 40 E. 3. 31. 14 E. 3. Meſne 7.

U And if a man recover acquittal of a Writ of *Meſne*, &c. he ſhall after have a *Diſtringas ad acquietandum*, and if he 40 E. 3. 31.

do

[137] do not appear, he ſhall be forejudged by default of his Mei-
nalty; and ſo if he appear, and it be found by Ver-
gainſt him, he ſhall be forejudged.

Old Na-
Brev. 83.
11 E. 3. Br.
ſuit 42 E. 3.
42.

And a man ſhall have a writ of *Meſne* to acquit him of
unto a Hundred which the *Meſne* ought to do by reaſon of his
Meinalty, and not by reaſon of Reſiancy, *&c.* And the proceſs
in a Writ of *Meſne* is Summons, Attachment, and *Diſtringas*;
and if the Defendant hath not any thing in the County by
which he can be diſtrained, Then the Plaintiff may ſurmiſe
that he hath Aſſets in another County, and pray a *Diſtringas*
thither, and he ſhall have it by the Statute; and upon that
he ſhall be forejudged, *&c.* if he do not appear, and the Writ
be ſerved and returned againſt him. But that is given by the
Statute: for at the Common Law he ſhall not have but Diſtreſs
infinite in the ſame County where the Writ was brought, and
that is in the County where the Land is; and at this day he
may chooſe whether he will ſue the Proceſs at the Common
Law, Diſtreſs infinite in the County, or the Proceſs which is
given by the Statute, Summons, Attachment, and the Grand
diſtreſs, which ſhall have day to anſwer by ſuch times as two
Counties may be holden, in which the Sheriff ſhall make pro-
clamation that he come to anſwer the Plaintiff; and if he do
not come, and the writ be returned, then he ſhall be forejudged.

Writ de Plegiis acquietandis.

THE *Writ de Plegiis acquietandis* lieth, where a man be-
comes Pledge or Surety for another to pay a certain
ſum of money at a certain day, *&c.* if the Party doth not
pay it at the day, *&c.* If he who becomes Surety be com-
pelled to pay the money, he ſhall have this Writ againſt
him who ought to have paid the ſame. But it hath been
a queſtion whether this writ lieth without ſhewing a ſpe-
cialty; and it ſeemeth reaſonable that it be maintainable,
although he have not any ſpecialty to prove it. For the
writ as it ſeemeth is given by the Statute of *Magna Charta*,
cap. 8. which is; *Quod ſi plegii voluerint, habeant terras*
& tenementa debitoris quouſque ſit his ſatisfact. de debito, quod
antea pro ſe eos ſolverint. And there it is not ſpoken of any
writing made betwixt them; and if he have a writing,
then he may have remedy thereupon by the Common Law,
or by writ of Covenant, or Debt; and then that Statute
needed not to have been made. And *Paſch.* 43. *E.* 3. 10.
it is adjudged, That the *Writ de Plegiis acquietandis* lyeth
without any ſpecialty ſhewed thereof, and it ſeemeth good
reaſon:

Ye. 22. *Eliz.*
Dy. 378.

Fitz. pledges
3. there it
was alledged
that the
cuſtome of
London was
ſuch.

reaſon: becauſe the Statute makes the Tie in that Caſe, and that appeareth by the Regiſter, becauſe Writs are given for the Executors of him who became pledge, and againſt him who was the Debtor, becauſe their Teſtator did not acquit his Sureties, *&c.* And this Writ is *Vicontiel*, and may be ſued in the County before the Sheriff, or in the Common Pleas by a *Pracipe*. And the form of the Writ is ſuch:

Rex Vic', &c. *Præcipimus tibi, qd. Juſticies* A. *qd. juſte*, &c. *acquiet.* B. *de* 20 *s. unde poſuit ſe in plegium* 5 *s.* C. *& eum nondum acquietavit, ut dic. ſicut rationabilit. monſtrare poterit, quod eum inde acquietare debeat, nè amplius*, &c. *pro defectu Juſt.* &c. And the form of the Writ for the Common Pleas is ſuch: *Rex*, &c. *Præcipe* A. *quod juſtè*, &c. *acquietet* B. *de cent. marcis, unde poſuit ſe in pleg. verſus* C. *& eum nondum acquietavit, ut dic'*, &c. *& niſi*, &c. Vel ſic pro Executoribus, *quod acquietet* B. *&* C. *execut. teſtamenti* D. *de* 10 *li. unde poſuit prædict.* D. *in pleg. verſus*, &c. *& eos nondum*, &c. Vel ſic verſus Executores, *Præc.* A. *&* B. *&c. execut. teſtament.* &c. *qd. juſtè*, &c. *acquietent* E. *de*, &c. *unde idem* E. *poſuit ſe in pleg. verſus* D. *& eum nondum*, &c.

E And if a man become Surety for another in the Exchequer to accompt for him, and doth not, he ſhall have a Writ againſt him to diſcharge him of the accompt, and the Writ is:

Rex, &c. *De acquietando* A. *de quodam compoto quem prad.* B. *pro ſe de tempore quo idem* A. *fuit ball. libertatis* If. *regina* Angl. *matris noſtr. in com.* D. *coram Theſaur. & Baron. noſtris de Scac. reddere manucepit, un. poſuit eum in pleg. verſus nos in Scac. prad. & eum nondum acquietavit*, &c.

Ve. 39 E. 3. 9. by *Knive*. Br. pledges 12. the plt. ought to have the Writ firſt againſt the party; and if he be inſufficient, then againſt the pledges. Mag. Charta cap. 8.

F And if a man become Surety for another to pay a certain ſum of money, or to doe other thing, *&c.* ſo long as the principal Debtor hath any thing and is ſufficient, his Sureties ſhall not be diſtrained by the Statute of *Magna Charta*: and if they be diſtrained by the Sheriff, *&c.* they ſhall have a ſpecial Writ upon the Statute for to diſcharge them. And the Writ ſhall be ſuch:

Rex Vic', &c. *Monſtraverunt nobis* A. *&* B. *quod cum ipſi devenijſſent pleg.* C. *verſus* D. *de quadam ſumm. pecun. in qua idem* C. *præfat.* D. *tenebatur, ac idem* C. *ſatis habeat, unde prædict. debitum ſolveret, tu nihilominus ipſos* A. *&* B. *diſtring. ad ſolvend. præf.* D. *pecuniam prædict. Et quia injuſtum eſt, quod plegii aliqui ad ſolution. debiti compellant. quamdiu principales debitores ſufficient. habeant, unde debitum ſuum reddere poſſunt, Tibi præcipimus, qd.* C. *diſtring. ad prad. pecuniam ſolvend. & præf. pleg. ſuos pacem inde habere permittas & averia ſua,*

ſi quâ ea occaſione ceperit, ſine dilatione deliberari fac'. Teſte, &c.

And it ſeemeth that this Writ lieth where a man recovereth againſt the Sureties in the Country, and the Sheriff diſtrains them to pay the debt, where the Principal is ſufficient. But if he ſue the Sureties in the Common Pleas, where the Principal is ſufficient to pay the debt, *&c.* Now whether the Sureties may plead that, and aver that the principal Debtor is ſufficient to pay it; Or whether they ſhall have a Writ to the Sheriff not to diſtrain them, if the Principal be ſufficient. *Quære* of thoſe caſes. And the proceſs in the Writ is Summons, Attachment and Diſtreſs.

[138]

Writ of Detinue.

A Writ of *Detinue* lieth, in Caſe, where a man delivereth Goods or Chattels unto another to keep, and afterwards he will not deliver them back again; Then he ſhall have an action of *Detinue* of thoſe Goods and Chattels; and ſo if a man deliver Goods or money put up in Bags, or in a Cheſt, or in a Cupboard, to deliver unto another, and he will not deliver the Goods or the money in the Bags; he to whom they ſhould be delivered ſhall have a Writ of *Detinue* for thoſe Goods, *&c.* But if a man deliver money not in any Bag or Cheſt, to redeliver back, or to deliver over unto a ſtranger; now he to whom the money ſhall be delivered, ſhall not have an action of *Detinue* for the money, but a Writ of Account; becauſe *Detinue* ought to be of a thing which is certain; as of money in Bags, or of a Horſe, or of a hundred Cows, or ſuch certain things. And this Writ may be *vicontiel*, and ſhall be ſued before the Sheriff in the County if the Plaintiff pleaſe; or he may ſue it in the Common Pleas, and the form of the Writ in the Common Pleas is:

A

B

If a man bail a thing to bail to *I. S.* he ſhall have *Detinue* Priſot. yet he hath no propetty till agreement, 39 H. 6. 44. Laicon. contr. 7 H. 4. 13. *Detinue* was brought of a Bag with 20 *l.* and by *Martin*, 4 H. 6. 1, & 2. If a man bail 20 *l.* to rebail *Detinue* lieth, and not accompt contr. if it were *per accompt. rendr.* 6 E. 4. 11. *Detinue* of four quarters of Barley, and doth not ſay in Sacks; and yet good.

Rex Vic', &c. *Præc'* A. *&c. qd.* &c. *redd.* B. *unam chartam quam ei injuſtè detinet, ut dicit, & niſi*, &c. Vel ſic, *Quod redd.* B. *unam pixidem cum tribus ſcriptis obligat. in eadem pixide contentis ſub ſigillis prædict.* B. *conſignat'*. And the Rule in the Regiſter is, *quod in brevi de Chartis reddendis ſemper debet*

debet poni cert. numerus Chartar' vel ſcriptor'. And a man may have a Writ of *Detinue* of one writing, and the Writ ſhall be, *Præc' A. qd.* &c. *redd. B. quoddam ſcriptum, per quod B. omnia bona & catall' ſua in manerio de N. nuper exiſt. I. de L. dedit & conceſſit, qd. ei injuſtè,* &c. And the form of the Writ in the County is ſuch: *Rex Vic',* &c. *Præc. tibi, quod juſtic'es A. quod juſtè,* &c. *redd. B. unam Chartam, vel tres Chartas, vel unum ſcriptum obl. vel conventionale, vel acquietan. vel teſtam, vel chirographum, quod, quas vel quæ ei injuſtè detinet, ut dicit, ſicut rationabilit. monſtrare poterit, quod ei ea redd. debeat, nè amplius,* &c.

Note, that in 21 H. 26, 29. the Writ was *Redd at bona & catalla*; and declares of three deeds; contr. if of 3. obligations. 19 E. 3. *Detinue* 49. The Writ was *Unam Chartam*, And the Count of a confirmation.

C And if a man ſue in any Court a plaint of *Detinue* for any Charters which touch and concern Freehold, if it be not in the Common Pleas by the King's Writ, the Defendant may ſue a Prohibition; to prohibit them, *&c.* and to ſurceaſe, *&c.*

Rex ball. I. de R. ſal. Cum pl. ita de detentione chartarum ſeu ſcriptorum liberum tenementum tangen. in aliquibus cur. quæ record. non habent, ſecundum legem & conſuetud. Regni noſtri ſine brevi noſtro placitari non debeant, ac W. B. de eo quod idem B. redd. præfat. W. tres Chartas coram vobis in cur. prædict. Dom. veſtri de R. ſine brevi noſtro implacitet, ut accepimus, vobis præcipimus, quod ſi ita eſt, tunc placito illo coram vobis in curia prædict. ſine brevi noſtr. ulterius tenend. ſuperſedeatis omnino, & præf. W. dicatis ex parte noſtra, quod breve noſtrum de detentione chartarum prædict. verſus præf. B. ſibi impetret, ſibi viderit expedire. Teſte, &c.

D And the Plea may be removed by *Pone* out of the County at the Plaintiff's ſuit, without cauſe ſued in the Writ; and at the ſuit of the Defendant he ought to ſhew cauſe in the *Pone*: and this clauſe ſhall be in the end of the Writ. *Fiat executio iſtius brevis, ſi cauſa ſit vera, aliter non,* &c.

E And if a man find my goods which I have loſt, I ſhall have a Writ of *Detinue* of them. 38 H. 6. 24; 25. Lit.

F And if a man giveth Lands in tail by deed indented, and the Donee dieth without heir, the Donor ſhall have a Writ of *Detinue* for that part of the deed indented which the Donee had.

And ſo if Lands be given to two men and the heirs of one of them; If the Tenant for life dieth, he who hath the Fee ſhall have a Writ of *Detinue* for that deed. 7 E. 4. 26. Moitie.

G If a man make a Feofment in Fee of his Land by deed, yet the Feoffee ſhall not have the Charters concerning the Land, but the Feoffor ſhall keep them, if he do not give them to the Feoffee; but againſt a ſtranger the Feoffee ſhall have an Action of *Detinue* for thoſe Charters which 18 E. 4. 14. the Feoffee ſhall not have this Writ againſt a ſtranger.

concern the Lands, if he cannot make title by the Feoffor, or thoſe who claim title by the Feoffor.

H. 3 10. And the heir in tail ſhall have a Writ of *Detinue* againſt the Diſcontinuee for the deed of entail by which the Land was given. H

9 H. 6. 58. The heir ought to make Title to the Land, otherwiſe the Executors ſhall have them. 19 H. 6. 41. acc. 9 E. 4. 52. And if a man maketh a Feofment in Fee of his Land which is Feeſimple, his heir ſhall have the Charters which concern the ſame Lands, and not the Executors of the father. I

If a man make a Leaſe for years and afterwards confirms his Eſtate in Fee, the heir of the Feoffee ſhall have the deed of the Leſſor for years, as well as the deed of confirmation, becauſe that the deed doth make the confirmation good: And ſo of every deed which maketh his title, or a releaſe, or the like, without which his title ſhall not be ſure, and he ſhall have an Action of *Detinue* for them. K

9 H. 6. 15. 10 E. 4. 9. 39 E. 3. Br. Chart. 38. 10 E. 4. 9. 10 E. 4. 14. The Lord by Eſcheat ſhall have *Detinue* for Charters. And the heir ſhall have a *Detinue* of Charters, although he hath not the Land; As if I be enfeoffed with warranty, and I enfeoff another with a warranty in fee, my heir ſhall have a *Detinue* of that deed by which I am enfeoffed, becauſe he may have advantage of the warranty. L

And if my Father be diſſeiſed, and dieth, I ſhall have a *Detinue* for the Charters, although I have not the Land, and the Executors ſhall not have the action for them.

And if a man have goods delivered to him to deliver over to another, and afterwards a Writ of *Detinue* is brought againſt him by him who hath right unto the goods; Now if the defendant depending the Action deliver the goods over to whom they were bailed to him for to deliver, the ſame is a good bar in the Action, becauſe he hath delivered them according to the bailment made unto him. N

For *Detinue* 61. 13 H. 3. Prohibition 21. See 44. c. And after divorce made betwixt the husband and the wife, the wife ſhall have a Writ of *Detinue* for the goods given with her in *Frankmarriage*, which ſee *M.* 34 *E.* 1. And the proceſs in *Detinue* is Summons, Attachment and Diſtreſs. A

Writ de Recto de Cuſtodia terræ & hæredis.

THE Writ *de Cuſtodia Terræ & Hæredis* lieth where the Tenant holdeth of his Lord by Knights ſervice, and dieth in his homage, and a ſtranger entreth into the land, and taketh the body of the heir; The Lord of whom he holdeth the land ſhall have a Writ of *Cuſtodia Terræ & hæredis*; and the Writ is ſuch: B

Rex

Rex Vic', &c. *Præc.* A. *quod*, &c. *redd.* B *cuſtod. terr. & hæred.* C. *quam ad ipſum* B. *pertinet, eo qd. præd.* C. *terr. ſuam de eo tenuit per ſervitium militare, ut dic'*, &c. *& niſi*, &c.

C *Aliter de hæred. terr. Præc.* A. *qd.* &c. *redd.* B. *&* C. *uxorem ejus* W. *filium & hæred.* E. *cujus cuſtodia ad ipſos* B. *&* C. *pertinet, eo qd. pd.* E. *terram ſuam de præf.* C. *&c.* Vel ſic: *de l. patre pd.* C. *cujus hæres ipſe eſt & tenuit per ſervitium militare, ut dicit*, &c. *& niſi*, &c.

And a Writ of the Lands onely is ſuch: *Præc.* A. *qd.* &c. *redd.* B. *cuſtod. unius virgat. terr. cum pertin. in* R. *quæ ad ipſum pertinet, eo quod* C. *terram illam de eo tenuit per ſervitium militare, ut dic'*, &c. Vel ſic: *ratione dimiſſion. qd. ad ipſum* B. *pertin. quam* A. *de quo prædict.* C. *terram illam tenuit per ſervic. militare, inde fecit eid.* B. *ut dicit*, &c.

D And if a man have a wardſhip by reaſon of a Ward, and he is taken from him, the Writ ſhall be thus: *Quod reddat.* B. J. *filium & hæred.* C. *cujus cuſtodia ad ipſum pertinet ratione cuſtod. terr. & hæred.* R. *de quo prædict.* C. *terram illam tenuit per ſervic. militare, inde fecit eid.* B. *ut dicit*, &c.

And if the Lord Paramount will ſhew a Writ of right of ward for the Services and Rent, and the heir of the Meſn, he may have a general Writ of the land and heir, if he will, or a ſpecial Writ thus:

Præcipe A. *qd.* &c. *reddat* B. *cuſtodiam decem ſolid. redditus, & hæred.* C. *quæ ad ipſum pertinet, eo quod prædict.* C. *tenementum unde redditus ille provenit, de eo tenuit per ſervitium militare, ut dicit.*

F And this Writ may be ſued in the County before the Sheriff by a *Juſticies*, and then the Writ is ſuch:

Præcipimus tibi, qd. juſticies A. *quod reddat* B. *cuſtodiam terr. & hæred.* C. *quæ*, &c. *ut dicit, ſicut rationabiliter*, &c.

G And the Plaintiff may remove the ſame by a *Pone* without cauſe ſhewed, and the Defendant ought for to ſhew cauſe in the *Pone*, as he ſhall doe in a *Replevin*.

H And it appeareth by the Regiſter, That the Guardian in Socage ſhall have the Writ of Right of ward of the heir alone, or of the Land alone, or of both; for the heir thus:

Rex, &c. *Præc.* A. *quod*, &c. *redd.* B. W. *filio & hæred.* C. *cujus cuſtod. ad ipſum* B. *pertinet, eo quod prædict.* C. *terram ſuam tenuit in ſocagio, & prædict.* B. *propinquior eſt hæredi ipſius* C. *ut dicit.*

And there is the like Writ for the Land. And the reaſon and cauſe that he ſhall have this Writ ſeemeth to be, becauſe that for the Land he cannot have other remedy, if he cannot enter into the Land: and yet I conceive that

Guardian in Socage ſhall not have a Writ of Right of Ward for the Land, becauſe he is accountable unto the heir for the ſame, which proves he hath no right unto the Land, but as Bailiff.

And the Guardian in Socage ſhall have a Writ of ward for cauſe of wardſhip, where his Gdardian ought to have another Infant in ward, becauſe he is next of bloud unto him to whom the Inheritance cannot deſcend; and the Writ is ſuch:

Rex, &c. *Præc.* A. *quod*, &c. *red.* B. *cuſtodiam terr. & hered.* C. *quod ad ipſum* B. *pertinet ration. cuſtodiæ* J. *filiæ & hered.* D. *qui terram ſuam tenuit in ſocagio, in manu ipſius* B. *exiſten. eo quod prad.* B. *terram ſuam tenuit in ſocagio, & pradict.* B. *propinquior eſt hæredi ipſius* J. *ut dicit, Et niſi*, &c.

And it ſeemeth, That a Writ of Right, *De communi cuſtodia*, was at the Common Law, and as well for Guardian in Soeage for the body of the heir, as for Guardian in Knights ſervice. But the Writ of Raviſhment of ward was not at the Common Law for the Guardian in Knights ſervice, but the ſame was given by the Statute of *Weſtm.* 2. *cap.* 35. And by the Equity of that Statute Guardian in Socage ſhall have a Writ of Raviſhment of ward as well as Guardian by Knights ſervice; and by the ſame reaſon he ſhall have a Writ of Right of ward at the Common Law, as Guardian in Socage ſhall have.

And if the Meſn hath two daughters, one within age, and the other of full age, and dieth; and the Lord hath the wardſhip of her within age, and afterwards the Tenant dieth, his heir within age, now the Lord Paramount, and the Siſter of full age who is one of the Meſns, ſhall have a Writ of Right of ward in this form:

Præc. A. *&c. quod*, &c. *reddat* B. *uni filiar. & hæredum* W. *&* P. *de* E. *cuſtodiam terræ & hæred.* R. *quod ad ipſos* B. *&* P. *pertinet, eo quod prad.* R. *terram ſuam de præf.* B. *&* M. *ſoror. ejuſdem* B. *altera fil. & hæred. ejuſdem* W. *infra ætatem, & in cuſtodia prædict.* P. *exiſten. tenuit per ſervitium unilitare, ut dicunt, & niſi*, &c.

And it appeareth in the Regiſter, That the Writ *De Ejectione Cuſtodiæ* lieth for the Land, and for the heir together, for the Writ is ſuch:

11 H. 4. 64, 65. If the Ejectment of Ward be brought of Land onely, the party muſt ſhew the Certainty of the Land; But if it be of the Body and Land, the Writ general, *de terris & hered.* ſuffond.

23 Eliz. Dy. 369. It lieth not but of Land onely.

Rex

Rex Vic', &c. Si A. fecerit, &c. tunc ſum, &c. B. oſtenſur. quare cum cuſtodia terræ & hared. C. uſque ad legitim. ætatem hær. prad. ad ipſum A. pertineat, eo quod idem C. terram ſuam de eo tenuit per ſervitium militare, ac idem A. in plena & pacifica ſeiſina ejuſdem cuſtodiæ diu extiterat, prædict. B. prædict. hared. infra ætatem exiſten. ipſum A. à cuſtodia illa violent. ejecit, ut dicit, & habeas ibi ſum. & hoc breve, &c.

If he who ejects alien to another, yet he may have this Writ againſt him who ejected him; and yet the party ſhall recover Land to his Writ. 12 H. 4. 20. by *Haukford*; ſo if one eject the Ejector, he who was firſt ejected ſhall not have this Writ, no more than one ſhall have Treſpaſs, &c. againſt the ſecond Treſpaſſor, 39 Aſſ. 9.

A Another Writ for the Land onely, where he hath the ſame by grant of the Guardian, thus:

Rex Vic', &c. Si A. fecerit, &c. tunc ſum. &c. quare cum cuſtodia unius virgat. terræ cum pertin. in D. uſque ad legitimam ætatem J. fil. & hared. C. ad ipſum A. pertineat, ratione dimiſſionis quam R. de quo prædict. C. terram ſuam tenuit per ſervit. militare inde fecit eidem A. ut dicitur, ac idem A. in plena & pacifica ſeiſina ejuſdem cuſtod. diu extiterit, idem B. hared. prædict. infra atat. exiſten. prad. A. à cuſtod. prad. violenter ejecit, ut dicit, &c.

B Another Writ when a man hath a Ward of the King's grant, and he granteth the ſame over unto another, Then thus, as above:

Ratione dimiſſionis, quam C. qui cuſtod. illam habuit ex commiſſion. Dom. Ed. nuper Regis Angliæ, *pradeceſſ. noſtri, de quo prad. R. terram ſuam tenuit per ſervitium militare, inde fecit eidem B. &c. ac idem, &c.* Or thus, *Si B. fecer, &c. tunc ſum. B. reſpondend. tam nobis quàm præfat. G. quare cum nos commiſerimus præf. E. cuſtod. terr. & tenement. qua fuer. J. de C. defuncti, qui de nobis tenuit in capite, & qua ratione minoris ætat. P. conſang. & hared. prædict. J. in manum noſtram extiterunt, habend. cum omnibus ad cuſtod. ill. ſpectantibus uſque ad legit. atat. hared. prædict. & idem E. in plena & pacifica ſeiſina ejuſdem B. cuſtod. pratext. commiſſ. noſtr. prad. diu extitiſſet, idem B. hared. prad. infra atat. exiſten. prad. A. à cuſtod. cent. ſolid. redditus cum pertin. in H. inde violenter ejecit, ut dicit, &c.*

C And Guardian in Socage ſhall have a Writ *De Ejectione Cuſtodiæ*, as appeareth by the Regiſter; and the like reaſon, as well as he ſhall have a Writ of Raviſhment of Ward for the body, he ſhall have a Writ of Ejectment of Ward for the Land. 13 H. 4. 17.

And if a man have the Patronage of an Abby or Priory, and hath right to have the Temporalties during the time of vacation of them, if he have the poſſeſſion thereof, and be ouſted, he ſhall have a Writ *De Ejectione Cuſtodiæ*; and the Writ ſhall be ſuch:

Oſtenſur. quare cum cuſtod. priorat. de B. *ad ipſum* A. *in vacationibus ejuſdem prioratus pertineat, ac idem* A. *in plena & pacifica ſeiſina ejuſdem cuſtodiæ in ultim. vacatione ejuſdem cuſtod. in ultima vacatione prioratus prædict. diu extiterit, prad.* B. *præf.* A. *à cuſtodia illa violenter ejecit*, &c.

And by the Regiſter it is ſaid, That the Writ of Right may be ſued *De Cuſtodia Priore*, in time of vacation, &c. thus:

Rex, &c. *Prac'*, &c. *quod*, &c. *redd.* B. *cuſtodiam Prioratus de* N. *&c.*

And that is grounded upon the Statute of *Magna Charta*, cap. 2. *Quod omnes Patroni Abbatiarum*, &c.

And there is another Writ of Ward for the body, which is called a *Writ of Raviſhment of Ward*: and that Writ lieth as well for Guardian in Socage as for Guardian in Knights ſervice.

And if a man have one in Ward becauſe his Anceſtor held of him by Knights ſervice, and the Ward is raviſhed and taken from him; he ſhall have that Writ of Raviſhment of Ward.

And ſo ſhall the Grantee of the Ward, or his Executors if he be taken from them; and the form of the Writ for the Lord of whom the Anceſtor of the Ward held, is ſuch:

Rex Vic', &c. *ſalut. Si* A. *fecerit*, &c. *tunc pone*, &c. B. *quod ſit coram Juſticiariis noſtris, vel coram nobis tali die, ubicunque*, &c. *oſtenſur. quare* J. *fil. & hared.* C. *infra ætatem exiſtent. cujus maritagium ad ipſum* A. *pertinet, apud* N. *inventum rapuit & abduxit, contra voluntatem ipſius* A. *& contra pacem noſtram, & interim diligenter inquiras, ubi hæres ille ſit in ballivâ tuâ, & ipſum, ubicunque fuerit inventus, cap. & ſalvo & ſecur. cuſtod. ita quod eum habeas coram præf. Juſtic. noſtris.* Or thus, *Coram nobis*, &c. *ad præf. terminum ad redd. cui prad.* A. *&* B. *reddi debeat, & habeas*, &c.

And if the heir be raviſhed and carried from County into County, then the Writ ſhall be thus:

Rex Vic', &c. *Queſt. eſt nobis* A. *prædict.* B. C. *fil. & hared.* J. *infra ætat. exiſtent. & in cuſtodia ſua exiſtent. apud* E. *in Com.* Linc. *rapuit, & de Com. illo uſque* I. *in Com. tuo abduxit, contra volunt. ipſius* A. *& contra pacem noſtram: & ideo tibi præcipimus,*

mus, quod prædict. hæred. ubicunque in balliva tua inven. poteris, capias & salvo & secur. custodias, ita quod eum habeas coram Justic. nostris apud, &c. tali die, quem diem idem A. habet vers. præfat. B. ad redd. cui de jure reddi debeat, & habeas, &c.

G And the form of the Writ for the Guardian in Socage is thus:

Rex, &c. Si A. fecerit, &c. tunc pone, &c. B. &c. quare cum custodia terr. & hæred. C. usque ad legitimam ætatem ipsius hæredis ad ipsum A. pertineat, eo quod prædict. C. terram suam tenuit in socagio, & prædict. A. propinquior est hæredi ipsius C. ac idem A. in plena, &c. diu extiterit, prædict. W. B. filium & hæredem prædict. C. infra ætatem, & in custodia ipsius A. exist. [141] *apud N. invent. vi & armis cepit, & abduxit, & alia enormia ei intulit, ad grave damnum ipsius A. & contra pacem nostram. Et habeas ibi nomina pleg. & hoc breve. Teste, &c.* Vel sic: *Vi & armis rapuit, & ipsum sine licencia & voluntate ipsius A. maritavit ad grave damnum, &c.*

A And if the Infant be in the custody of the Lord, and during his nonage he enter upon the Lord, and ouſt him of the land which he ought to have in Ward, Then the Lord ſhall have a Writ of Intruſion of ward againſt him, and the Writ ſhall be ſuch:

B *Rex Vic. &c. Si A. fecerit, &c. tunc ſum. &c. I. filium & hæred. C. oſtenſ. quare cum cuſtod. ad ipſum A. uſque ad legitimam ætatem hæredis prædict. pertineat ratione dimiſſionis, quam L. de quo prædict. C. terram ſuam tenuit per ſervitium militare inde fecit præfat. A. & quæ A. in plena & pacifica ſeiſina, &c. extiterit, prædict. I. infra ætatem exiſtens, ſe in terram prædict. intruſit, & cuſtodiam illam præfat. A. detinet, ad damnum ipſius A. non modicum & gravamen, &c. ut dicit, &c. Et habeas, &c.* Vel ſic: *oſtenſ. quare cuſtodia manerii de T. cum pertin. uſque ad legitimam ætatem prædicti I. ad ipſum A. pertinuiſſet ratione dimiſſionis, quam B. cui H. de quo & Alice uxor ei prad. C. Manerium illud tenuit per ſervitium militare, illud dimiſit, inde fecit præf. A. &c. ac idem A. in plena, &c. prad. I. dum infra ætatem fuit, ſe in manerium prædictum intruſit, & cuſtod. illam præfat. A. hucuſque detinuit, ad damnum, ut dicit, & habeas, &c.*

C And the Writ lieth where the Tenant holdeth of a man and his wife by Knights ſervice in the right of the wife, and the Tenant dieth, his heir within age, and the husband granteth the wardſhip of the land unto another who granteth it over unto another, upon whom the heir intrudeth, &c.

2 H. 7. 9. 21 Ass. 26. Br. Assise, 321.

And if the Lord have the cuſtody of the Heir within age, and tender him a convenient marriage, and he refuſeth it and intrudeth, Then the Lord ſhall have a Writ againſt him for to recover the value of the marriage, and alſo to recover the Land, which ſhall be ſuch: D

Ve. 8 Eliz. Dyer 255. the tender traverſed.

Rex Vic', &c. *Si* A. *fecerit*, &c. *tunc ſumm.* &c. B. *&c. oſtenſ. quare cum maritagium prædict.* B. *ad ipſum* A. *pertineat, eo quod prædict.* B. *terram ſuam de eo tenuit per ſervitium militare, & idem* A. *prædict.* B. *dum fuit infra ætatem in cuſtodia ſua competens maritagium abſque diſparagatione, juxta formam ſtatuti de communi conſilio regni noſtri inde proviſi, ſæpius obtulerit, idem* B. *maritagium illud renuens præf.* A. *de maritagio ſuo contradicit*, &c. *ad grave damnum*, &c.

And it appeareth by the Writs aboveſaid, That the Guardian ſhall have a Writ of Intruſion of Ward againſt the heir, as well at his full age, as during his nonage. E

There is another Writ *De valore maritagii* for the Lord or for his Executors againſt the heir, without ſpeaking of any intruſion made by the heir into the land. And the Writ is ſuch: F

Rex Vic', &c. *Si* A. *&c. fecerit*, &c. *tunc ſumm*, &c. *quare cum maritagium ipſius* L. *&c.* (uſque ibi) *obtulerit, præf.* L. *maritagium illud renunciet de eodem maritagio præfat.* A. *cum jam ad plenam ætatem pervenerit ſatisfacere recuſavit, & adhuc recuſat minus juſtè, ad damnum*, &c. *Et contra formam ſtatut'.*

And if the heir be in the Lord's cuſtody, and doth marry himſelf within age, without the aſſent of the Lord, and when he cometh of full age, he entreth upon the Lord, and put him out of the land, Then the Lord ſhall have a Writ of forfeiture of marriage againſt him, for the double value of the marriage. And the Writ ſhall be ſuch: G

Si A. *fecerit*, &c. *tunc ſumm.* C. *fil. & hæred.* D. *quod ſit coram Juſticiar'*, &c. *oſtenſ. quare cum maritagium ipſius* C. *una cum cuſtodia unius acr. terr. cum pertin. in* N. *ad ipſum* A. *pertin. ratione dimiſſion. quam* L. *quod cuſtodiam illam habuit ex dimiſſione* F. *cui* G. *eam dimiſit, de quo prædict.* D. *terram ſuam tenuit per ſervitium militare, inde fecit præfat.* A. *& idem* A. *præf.* C. *dum fuit infra ætatem & in cuſtodia ſua competens maritagium abſque diſparagatione juxta formam ſtatuti de communi conſilio regni noſtri inde proviſa ſæpius obtulerit, idem* C. *maritagium illud renuens, ſe ſine licentia & voluntate ipſius* A. *maritav. fecit, & ſe in terris prædictis (præf.* A. *pro maritagio prædicto non ſatisfacto) intruſit, & de maritagio prædicto eidem* A. *ſatisfacere contradicit, ad grave damnum ipſius* H

ipſius A. & contra formam ſtatuti prædict. ut dicit, & habeas, &c. *ſumm.* &c. *Teſte,* &c.

I And that Writ lieth where the Lord granteth the Wardſhip of the heir and land of his Tenant unto *F.* who granteth the ſame heir and land unto *L.* who granteth the ſame over unto the ſaid *A.* the now Plaintiff, who tendereth marriage unto *C.* and he refuſeth the ſame, and marrieth himſelf during his nonage, and at his full age entreth into the land, the Marriage not ſatisfied, *&c.*

K And otherwiſe for the Lord againſt the Tenant himſelf, thus:

Si A. fecerit, &c. *ſumm',* &c. B. *fil. & hæred.* C. *quod ſit coram Juſticiar.* &c. *oſtenſ. quare cum maritagium prædictum* B. *ad ipſum* A. *pertineat, eo quod prædict.* C. *terram ſuam de eo tenuit per ſervitium militare, & idem* A. *competens maritagium abſque diſparagatione,* &c. *& prædict.* B. *dum infra ætatem fuit, frequent. obtulerit, idem* B. *maritagium illud admittere recuſavit, & ſine licentia & voluntate præf.* A. *ſe maritavit,* &c. *ad grave damnum,* &c.

L And the Lord may have ſuch Writ of Forfeiture of marriage againſt the heir of the Meſn, if he marry during his nonage, and enter into the Meſnalty, or take the Rent and Services of the Tenant paravail, and the Writ ſhall be general, as if he were Tenant paravail, *&c.* not making mention of the Meſnalty. [142]

A If a man be Tenant in tail, the reverſion to the King, and the King doth licenſe him to alien in Fee, and to take back an Eſtate unto himſelf and his wife in tail, the remainder to his right heirs, and he maketh ſuch Feofment, and taketh back an Eſtate unto himſelf and his wife in tail, the remainder to his right heirs, and dieth, his heir within age; The King, notwithſtanding his Licence, ſhall have the wardſhip during the life of the wife, for that the Licence doth not give him power to alien the King's Reverſion, *&c.* And when the Reverſion cannot be diſcontinued, the Eſtate tail cannot be diſcontinued, but by his death the heir may enter into the Land, and ſo the King may in his Right.

B If a man have Lands for life, the remainder in Fee unto another, and he in the remainder dieth, his heir within age, he ſhall not be in Ward during the life of the Tenant for life; becauſe that during his life, the Tenant for life is Tenant to the Lord Paramount, although the Land be holden by Knights ſervice. And the Guardian ſhall put out the Termor who holdeth for years of the Leaſe of his Tenant. *v.* Dyer 8. & 12. & 132. b. C. 9. part 98.

And

And the Statute of *Marlebridge* in a manner proveth he may ſo doe. And there are many old books to prove the ſame by Judgments that are given; and it ſeemeth reaſonable that it ſhould be ſo, by the ancient Title which the Lord hath, when he reſerved ſuch Services upon his Feoſment, to have the wardſhip if he dieth, the heir being within age. C

C.3 part 35. 41 E. 3. 18. Br. War. 20. And if the Tenant be diſſeiſed and dieth, his heir being within age, the Lord ſhall ſeiſe the Ward, and enter into the land upon the diſſeiſor in the right of the heir. D

33 H. 6. 16. Priſot. But if the Tenant doth enfeoff his Son during his nonage, who doeth homage unto the Lord, and afterwards the Tenant dieth, the heir within age, the Lord ſhall not have the wardſhip of him, becauſe he hath accepted of him for his Tenant in the life of the Father. But it appeareth by *Magna Charta*, That the Lord ſhall take homage of the heir before he have the wardſhip of him, but that is after the death of the Anceſtor, and not in the life of the Anceſtor, and ſo was the Law taken in Old books. E G

14 Aſſ. Br. Aſſiſe 192. Com. 133. 36 E. 3. Gard. 11. 31 E. 1. Gard. 155. Br. Fealty. If a man purchaſe Lands by feofment which are holden ſeverally of divers Lords by Knights ſervice, and afterwards dieth, his heir within age, That Lord who firſt getteth the Ward ſhall have him, becauſe there is no priority; But if he purchaſe lands which are holden by Knights ſervice of one Lord, and afterwards purchaſe lands by Knights ſervice of another Lord, and dieth, his heir within age, that Lord ſhall have the wardſhip of the heir of whom the land firſt purchaſed was holden, for he holdeth of him by the more ancient feofment and priority, than he holdeth of the other Lord. F H I

Good bar in Forfeiture of Marriage. In 7 E. 2. Accon. fr. Statute 31.

So of Land in uſe, 21 H. 8. B. prerogative 92.

And if a man hold of the King by poſteriority; and holdeth lands of another Lord by priority, and afterwards dieth, his heir within age, the King ſhall have the wardſhip of his body by his Prerogative, not having regard to the priority or poſteriority. K

C.3 part 36.

Nota. If Plenarty be a good plea againſt the *Queen*, where the reverſion is in the King. 18 E. 3. 13. *Stamford*, Prerogative 33.

And if a man hold of the King by poſteriority, and of another Lord by priority, and afterwards the King granteth the Seigniory unto the Queen for life, and afterwards the Tenant dieth, his heir within age, The Queen ſhall have the wardſhip of the body, not having regard unto the poſteriority, becauſe that the Reverſion of the Seigniory doth remain in the King.

But if the King hath granted the remainder of the Seigniory in Fee unto a ſtranger, Then it ſeemeth the Queen ſhall not have the wardſhip of the body, for the Seigniory

of

of posteriority, *&c.* and priority is changed by the Feoffment of the Tenant of the land. And if he make a Feoffment in Fee of the land which he holdeth by priority, and takes back an estate again of the same, Now he holdeth the same land of that Lord by posteriority; whereas he held it before of him by priority. But if the Lord of whom the Tenant holdeth by Priority, grant his Seigniory to another in Fee, and take back again an estate in the Seigniory to him in Fee, *&c.* yet the Tenant holdeth of him by priority as he held before, because the pleading of Priority is to say, That he holdeth of such a man and his Ancestors, or of those whose estate he hath in the Seigniory, *per antiquius feoffamentum*, &c. than he holdeth the other land, so that the Feoffment of the land doth make the priority. And if the Tenant do forejudge the Mesne, of whom he holdeth by Priority, *&c.* Yet he shall hold by Priority of the Lord Paramount, as he held of the Mesn before, *&c.*

If he make a Feofment at this done to his use. *Quære* if the Priority be gone. 2 E. 2. Fitz. Gard. 2. acc.

G The Mayor and Aldermen, and Chamberlains by the Custome of *London* shall have the custody of the Orphan in the City, and if they commit the Custody of such Orphan to another: He shall have a Writ of Ravishment of Ward against him who taketh the Ward out of his possession.

H And if the Guardian marry the heir after the age of 14 years, and afterwards the heir is taken by a stranger, the Guardian shall not have Writ of Ravishment, *&c.* because he hath had the effect of his marriage.

I If a man have a Ward in the Right of his wife, although the wife dieth, yet the husband shall have the Ward, because it is a Chattel vested in him.

Tenant in tail grants his estate of a Manor unto which advowson is appendant the Church void, Tenant in tail dieth, the Grantee shall have the Advowson. So if the Church void during the Term, and the Term expire, 9 E. 3. *Quære Impedit* 18.

K Where the Tenant maketh a Feoffment by Collusion, and the Lord accepteth the services of the Feoffee, then he shall not have the Wardship of the Tenants heir, nor shall oversee the Collusion.

But if a man at this day maketh a Feoffment in fee to his use, and the Lord accept the Services of the Feoffee: yet if the Feoffor who hath the use dieth, his heir within age, the Lord shall have the Wardship of his heir by the Statute of 4 *H.* 7. *cap.* 17.

[143]

But the *Cestuy que use* of a Seigniory shall not have Guard for the Feoffees before 27 H. 8. were Lord.

And

And if a man leaſe Lands for term of life, the remainder A to the Husband and Wife in tail, the remainder in fee to the heirs of the Husband, and the Husband and Wife die, his heir within age being Tenant for life, his heir ſhall not be in ward.

If the King's Tenant giveth Lands in tail without the B King's Licence, and the King accepteth the ancient Tenant for Tenant, and the Services, and afterwards the Donee
27 H. 8. 26. *Fitz-herbert contra.* Ve. 34 & 35 H. 8. Dyer 54. 4 H. 6. 19. in tail dieth, his heir within age, the King ſhall have the Wardſhip of him, as ſeemeth by the Statute of 34 *E.* 3. *cap.* 15. And this acceptance of the Services ſhall not conclude the King; for the King ſhall not be concluded, *&c.* if he have matter to ſhew which may ſerve him. And yet in *Anno* 4 *H.* 6. it is adjudged contrary; and therefore *Quære* the Law in that caſe.

And the lands of the wife within age ſhall be in Ward, C although her husband be of full age.

And if a woman be paſt the age of fourteen years at the time of the death of her anceſtor, ſhe ſhall not be in Ward.

The Committee of the King ſhall not have a Ward by D reaſon of the Ward, but the King ſhall have the ſame, becauſe the King remaineth Guardian, *&c.* and the heir ſhall ſue Livery.

2 H. 4. 19. ac. 40 E. 3. 14. *contra.* 10 Eliz. Dyer 277. If a Biſhop have Title to have a Ward, and doth not ſeiſe E him in his life time, and dieth, the Succeſſor ſhall have that Ward, and ſhall ſeiſe him, *&c.* Otherwiſe it ſeemeth if the Biſhop had ſeiſed him.

the Executors of the predeceſſor ſhall have the Ward. If the heir female be married by the Lord before her F age of fourteen years, and afterwards the husband dieth, the heir female ſhall not be married again by the Lord, *&c.* And by the ſame reaſon he ſhall not have a Writ of Raviſhment of Ward, if another man do raviſh her afterwards.

If the Grandfather have a Son, and the Son taketh a wife, G and have iſſue, and dieth, the Mother of the iſſue ſhall have the Wardſhip of the Child which is her own Child, and not the Grandfather, although the iſſue may have the land which ought to deſcend to him by the Grandfather, and
C. 6. part 22. 6. although that the Mother ſhall not have the land. *Hill.* 31 *E.* 3.

11 H. 7. 12. *contr.* 7 H. 4. 12. ac. If an Infant recover land by a Writ of *Dum non fuit compos mentis*, he ſhall not be in Ward; and ſo it ſeemeth if H he do recover by a Formedon or other Action Anceſtrel, where he could not enter, becauſe his Anceſtor did not

not die Tenant to the Lord, *&c.* nor in his Homage.

I And a man may ſeiſe his Ward, although he be Apprentice or in ſervice of another.

K But if the Tenant maketh a Feofment by Colluſion, The Lord ought to recover the Land by a Writ of Right of Ward, before he ſhall have a Writ for the Raviſhment of the Ward, *&c.*

L If a man be Tenant by the Courteſie of a Seigniory, the heir ſhall not be in Ward during the life of the Tenant by the Courteſie, *&c.*

But if a man have iſſue a ſon, and afterwards he taketh a wife who hath lands holden by Knights ſervice, and hath iſſue by her, and afterwards the wife dieth, if the husband be not Tenant by the Courteſie of the land, then the husband's younger ſon ſhall be in Ward during the life of his father, *&c.*

M If an infant be married in the life of his father within the age of conſent, and afterwards the father dieth, the infant being within the age of conſent; The Lord ſhall have a Writ of Raviſhment of ward for the infant, becauſe he may perhaps diſagree unto the marriage. 30 E. 1. Gard 156. *ac.* but ſhall not have Forfeitage upon tender and refuſal

N And the Lord of the Villain ſhall have the wardſhip of the land and the body of the heir of a Villain, if he ſeiſe him before the Lord, *&c.* otherwiſe not of the land. 7 H. 6. 12. in caſe of the King.

O If lands deſcend unto the wife, and afterwards the wife hath iſſue by her husband, and dieth before the husband entreth, ſo that he ſhall not be Tenant by the Courteſie; The iſſue ſhall be in Ward if he be within age, and if he be not heir apparent to the husband; and ſo if the iſſue by the wife were a woman, and within age, where the husband hath a ſon living, that iſſue within age ſhall be in Ward, during the life of the husband which is its father. 40 Aſſ. 7. Br. Vill. 31.

And *Paſch.* 31 *E.* 3. The opinion was, That if the husband have not lands which ſhall from him deſcend to his iſſue, That then his iſſue ſhall be in Ward for the lands of his wife, if he were within age, *&c.* in the life of the husband: But it ſeemeth the Law is not now taken to be ſo.

P Guardian in Socage did grant the wardſhip over to a ſtranger, and the Grant awarded good. *Hil.* 26 *E.* 3. *& Hil.* 31 *E.* 3.

Q If an infant enter for a condition broken upon a Feofment made by his Anceſtor, he ſhall be in Ward for that land, if it be holden by Knights ſervice. 11 H. 7. 12. 12 H. 7. 20. 6 H. 4. 4.

And

Ve. 2. & 3. Eliz. Dyer 190.

And a man or a woman ſhall have a Writ, *Quare filium & hæred. ſuum rapuit:* Or, *Quare filium & hæredem rapuit*, Or, *Conſanguineum & hæredem ſuum rapuit*, &c. and that by the Common Law.

And the Proceſs in a Writ of Ward appeareth by the Statute of *Marlebridge*, cap. 7. *viz*, Summons, Attachment, and Diſtreſs,

And in a Writ of Right of Ward, if he cometh not at the Diſtreſs, that the proclamation ſhall be awarded, that he ſhall have day by which two or three County Courts are holden in the mean time, before the return thereof; and if the Writ be returned, ſerved, and he do not appear, he ſhall loſe the Wardſhip, and the plaintiff ſhall by Judgment recover the ſame.

Writ of Eſcheat.

Foundership ſhall not Eſcheat nor be forfeited, becauſe it is tied to the blood. Alſo Rent charge ſhall not Eſcheat by death, contr. by attainder, 24 E. 3. 22. Br. Eſcheat. 9 H. 7. 37. 7 E. 4. 12. 220. Si Abby or Pariſh Church be diſſolved, the Lands which they held ſhall be Eſcheat. 21 H. 7. 29. If a man holdeth two Acres by ſeveral Services of one Lord, he ought to have two Writs of Eſcheat.

THE Writ of Eſcheat lieth where the Tenant who hath an Eſtate in Fee-ſimple, of any Lands or Tenements, and holdeth them of another, and the Tenant dieth ſeiſed without Heir General or Special, The Lord ſhall have the Writ of Eſcheat againſt him who is Tenant of the Lands or Tenements, after the death of his Tenant, and by this Writ he ſhall recover the Land, becauſe he ſhall have the ſame in lieu of his Services.

[144]

But if Tenant in tail die without Heir, he in the Reverſion ſhall not have a Writ of Eſcheat, but a Formedon in the Reverter.

Tenant in tail of a Sig. grants the ſame, Tenancy Eſcheat; Tenant in tail dieth without iſſue, he in the Reverſion ſhall have Eſcheat of the Land, becauſe it is come in lieu of the Sig. 8i 40 E. 3. 4. 23 E. 2. Eſcheat 9. but by his opinion he ſhall not have Eſcheat, becauſe the Reverſion was out of him at the death of the Tenant.

But if a man be Tenant in tail of Land, the remainder to A his right Heirs, and dieth without Heir, then the Lord of whom the Lands were holden in tail, ſhall have a Writ of Eſcheat, becauſe the Tenant in tail was Tenant unto the Lord for Fee-ſimple that he had in the Land, *&c.*

But if a man be Tenant for life, the remainder in Fee B unto a ſtranger and his Heirs, and afterward the ſtranger dieth

dieth without heir, and afterward the Tenant for life dieth; the Lord ſhall not have a Writ of Eſcheat, becauſe the Tenant for life was Tenant to the Lord, and not he in the remainder, *&c.* But there the Lord ſhall have a Writ of Intruſion if a ſtranger enter in the Land after the death of Tenant for life.

3 H. 2. Entr. 38. 7 H. 4. 17. contr. if the diſſeiſor die or alien, for theſe are Tenants by title.

C And if the Tenant be diſſeiſed, and afterwards dieth without heir, *&c.* it ſeemeth the Lord ſhall have a Writ of Eſcheat, becauſe his Tenant died in the homage. And in that caſe he ſhall have a Writ of Right of ward, if the Tenant die, his heir being within age, and by the like reaſon he ſhall have a Writ of Eſcheat.

D If the Tenant dieth without heirs, and afterwards the Lord dieth; the heir of the Lord ſhall have a Writ of Eſcheat for to recover the Land, *&c.* for that Eſcheat made, and ſhall give a right unto the Lord to have the Land.

46 E. 3. 4. the Son brought Eſcheat ſuppoſing that the Tenant held of his

And this Writ ſhall deſcend from the Lord unto his heir, *&c.* and the forms of the Writs of Eſcheats are divers: One where the Tenant is a Baſtard, and dieth without heir, and then the Writ is ſuch:

Father, whoſe heir he is, and exception taken, becauſe it ought to be *qd. de eo tenit.*

E *Rex Vic'*, &c. *Præc.* A. *&c. quod redd.* B. 10. *acr. terr. cum pertin. in* N. *quas* C. *de eo tenuit, & quæ ad ipſum* B. *reverti debent, tanquam eſcheata ſua, eo quod præd.* E. *baſtardus fuit, & obiit ſine hæred. ut dicit.* &c.

F And if he be not a baſtard, but dieth without heir, then the Writ is: *Et quæ ad ipſum* B. *reverti debeant tanquam eſcheata ſua, eo quod præd.* C. *obiit ſine hæred.* Vel ſic: *eo quod præd.* C. *feloniam fecit, pro qua ſuſpenſus fuit: vel pro qua utlagatus fuit: vel pro qua regnum abjuravit; & niſi,* &c. And the form of the Writs for the heir appear in the Regiſter.

G And the King ſhall have a Writ of Eſcheat for lands in *London*, if the Tenant died ſeiſed of Lands there without heir, becauſe the Lands in *London* are holden of the King: and this Writ he may ſue in the King's Bench or in the Common Pleas.

H And if a man be beheaded for Felony, or die after Judgment, before that be executed by the Officer: yet the Writ ſhall ſay, *Pro quo ſuſpenſus fuit*, &c. and it is not material whether that he be hanged or not.

Or if after judgment he be delivered to the Bith. 34 E. 3. Eſcheat to. contrary if he ſtand mute, 4 E. 4. 18. 22 H. 6. 38. Newton, if a man go beyond Sea without Licence, and taketh wife there, and hath iſſue and dieth, the Land ſhall eſcheat.

48 E. 3. 34. Where the Tenant is Utlage of Felony, the Lord hath Election to have a Writ of Eſcheat; ſuppoſing that the Tenant was Utlage, or that he died without heir.

And the courſe in the Regiſter was, that if a man were attainted of Felony, that the King did ſend a Writ to the Sheriff to enquire what Lands and Tenements he had, and which he held of the King, and which of other Lords, and by what Service, and what they were worth by the year, *Ultra repriſas*, and that he certifie the ſame. But the ſame is altered by the Statute of 28 *Eliz.* 3. *cap.* 9. which is, That a Commiſſion be made out unto the Sheriff to take the Indictment: and alſo there was another Writ appointed by the Regiſter, directed unto the Sheriff to enquire whether ſuch Houſe or Land which *W.* had, who was attainted of Felony, were ſeiſed into the King's hand for a year and one day or not, and of whom they were holden, and who had the year, day and waſte, and ought to anſwer the King for the ſame, and that he ſend the ſame before the King, *&c.* and now in place of theſe Writs, there ought to be a Commiſſion granted to enquire thereof, directed to certain perſons by the Statute aforeſaid.

And if a man be attainted of Felony, and another entreth I into the Land, and taketh the profits, and if it be found by Commiſſion that ſuch a man, who was attainted of Felony, had ſuch Lands and Tenements, and that the Lands and Tenements have been in the King's hand for one year and a day; and that *B.* hath taken the profits for that year and day, and alſo hath had the waſte thereof; and that the Lands are holden of *F.* Then *F.* ſhall have a Writ unto the Sheriff, for to deliver him ſeiſure of the Lands, *&c. Salvo jure cujuſlibet*, &c.

And he who hath taken the profits for the ſaid year and day, ſhall anſwer the King for the ſame: and thereby it appeareth that the King ſhall not have but the next year and day, which cometh after the attainder, and that he who took the profits for that year, ſhall anſwer the King for the ſame.

And if Lands be holden of an Abbat, and the Tenant die L without heir, *&c.* the Succeſſor ſhall have a Writ of Eſcheat, and the Writ ſhall ſuppoſe. *Ad ipſum nunc Abbatem reverti debet tanquam Eſcheata ſua, eo quod prad', &c. obiit ſine hared', &c. ut dic. Et niſi*, &c.

And the Tenant for life of the Seigniory ſhall have a Writ N of Eſcheat, or Tenant in Dowry, or by the Courteſie, and alſo the Lord ſhall have a Writ of Eſcheat of the Meſnalty, which is but a Rent-ſervice, and ſhall demand the Rent by the Writ.

And the King ſhall have a Writ of Eſcheat of Tenemens within

within Cities and Boroughs, which are holden of him in Fee-farm. 21 H. 7. 30. But by the Count, he shall suppose the land was holden.

And if a man have title to have a Writ of Eſcheat, if he do not accept homage of the Tenant, he ſhall not afterwards have the Writ againſt him, becauſe he hath accepted him his Tenant; and ſo if he accept Fealty of him. But if he do accept the Rent of the Tenant, that ſhall not bar him of his Writ of Eſcheat; and the Proceſs are *Summons, Grand Cape* and *Petit Cape*, as in other *Pracipe quod reddat*. 11 H. 4. 82. [145]

Writ of Covenant.

A WRits of Covenants are of divers natures: for ſome are mere perſonal: and ſome Covenants are real, to have a real thing, as Lands and Tenements: as a Covenant to levy a fine of Land is a real Covenant. But a Writ of Covenant which is more perſonal is, where a man by deed doth Covenant with another to build him a houſe, *&c.* or to ſerve him, or to enfeoff him, *&c.* and he doth not the ſame according to the Covenant, Then he with whom the Covenant was ſo made ſhall have a Writ of Covenant againſt him. And there is a Note in the Regiſter, which is this: *A Writ of Covenant ought not to be made according to Law Merch. without a Deed, becauſe no Plea of Covenant can be without Deed, and every man ought to be judged according to his Deed, and not by another Law:* and the form of the Writ is ſuch: *Rex Vic'*, &c. *Præc.* A. *quod*, &c. *teneat* B. *convent'*, &c. *de damn. & perdit. per infidelitatem & defectum*
B W. *fil.* R. *apprenticii præd.* B. *infra termin. ſex annorum illat. eidem* B. *reſtituend'. Et niſi*, &c.

C And if a man make a Covenant by Deed to another and his heirs to enfeoff him and his heirs of the Manor of D. &c. Now if he will not doe it, and he to whom the Covenant is made dieth, his heir ſhall have a Writ of Covenant upon that Deed; and alſo his Aſſign ſhall have a Writ of Covenant where the Covenant is made to him and his Aſſigns. 18 Eliz. Dy. 347. St. Anthony Cook's Caſe.

D And ſo Executors ſhall have a Writ of Covenant, of a Covenant made unto their Teſtators for a perſonal thing, and theſe Writs appear in the Regiſter.

And it appeareth by the Regiſter he may ſue a plaint of Covenant in the County or in the Hundred Court, *&c.*

And that he ſhall have a *Recordare* to the Sheriff for to remove the ſame out of the County into the Common Pleas, as it ſhall be done in a Replevin ſued there.

And if the plaint of Covenant be ſued in the Hundred, or in other Court of other Lord, he ſhall have an *Accedas ad Curiam* directed unto the Sheriff to remove the plaint into the Common Pleas.

And the Writ of Covenant for Executors is ſuch: *Præc.* F *I. quod*, &c. A. B. *&* C. *executoribus teſtament.* N. *conventionem fact. inter ipſum* N. *&* W. *de* E. *de ipſo* W. *cum præd.* N. *more apprenticii per ſeptem. moratur. & eidem* N. *poſt termin. illum complet. per tantum tempus quantum idem* W. *infra dict. termin. ſe à ſervitio ejuſdem* N. *elongaverit ſervitur. ad quam quidem conventionem adimplend. & manutenend. idem* W. *ſcript. ſuo ſe oblig. Et niſi*, &c. *Et præd. execut.* &c.

And if a man make ſuch Covenant by word. Or to G build him a Houſe, *&c.* and he doth doe it ill; then the Party ſhall have an Action upon the Caſe for the ill doing of it.

If a man covenant by word to doe ſuch a thing for a certain ſum of money, and receive the parcel of the money, and day is appointed for the payment of the reſt. Now if he doe not according to his Covenant, he ſhall have an action on the Caſe againſt him for not doing of it, becauſe it is a bargain betwixt them.

Vr. 48 E. 3. 2. 20 H. 7. 18. 32 H. 6. 31. And a Writ of Covenant lieth againſt Executors for a H Covenant broken of the Teſtator, and the Writ ſhall be: *Præcip.* I. *&* R. *executor. teſtament.* E. *quod*, &c. *teneant* W. *&* A. *uxori ejus conventionem factam inter ipſum* A. *& præf.* E. *de eo quod idem* E. *haved. vel executores ſui reddant* C. *fil. & hæred.* I. *cum idem* C. *ad plenam ætatem pervenerit, rationabil. compot. ſuum de omnib. terr. & tenement. quæ præd.* I. *tenuit in villa de* N. *in com.* N. *pervenient. quorum cuſtod. idem* E. *habuit ex dimiſſion. quam præf.* A. *cui cuſtod. terrar. & hæred. præd. pertinuit eo qd. prædict.* I. *terram ſuam tenuit in ſocagio, & eadem* A. *appropinquior fuit hæred. ipſius* I. *inde fecit eidem* E. *&c. Et niſi*, &c.

And if a man have Lands for a term of years, and covenanteth to leave them in as good a plight as he found them, although that he pulleth down the Houſes, the Leſſor ſhall not have an Action of Covenant before the end of the term: for the Covenant hath relation thereunto, *&c.* But if he doe waſte in Wood, Covenant lieth: for he cannot repair it, *E.* 1. *Covenant* 29.

22 E. 3. Covenant 2. 40 E. 3. 5.

If a man make a Leaſe by deed poll, if the Leſſor put out I the Leſſee, he ſhall have a Writ of Covenant upon the deed poll. But if a ſtranger who hath no Right, put out the Leſſee, he ſhall not have a Writ of Covenant againſt the Leſſor, becauſe

26 H. 8. 3. ac.

because he hath remedy by Action against the stranger. But if the stranger enter by Eisne title upon the Lessee, then he shall have an Action of Covenant against the Lessor, because he hath no other remedy.

M And in a Writ of *Covenant* brought by the Lessee against the Lessor, if the term be not expired, he shall recover the term again, if he have put him out. But if a stranger put him out by Eisne title, then he shall recover all in damages against the Lessor. And the second Lessee shall have a Writ of Covenant against the Lessor, if the Lease be made to him and his Assignees with warranty.

And if a man lease Lands for life by deed, and afterwards putteth him out, the Lessee shall not have a Writ of Covenant against him, but an Assize. But if he grant by the deed, That if a stranger enter by Eisne title, that then he shall have a Writ of Covenant thereupon: now upon this special matter he shall have a Writ of Covenant, otherwise not, *Quod Ve. Trin. 26 H. 6.*

A And in *London* a man shall have a *Writ of Covenant* without a deed for the Covenant broken.

B And a man shall have a Writ of Covenant against the Sureties who became Sureties, or gave security that a man should perform such Covenants, *&c.*

C And the Assignee of the Lessee shall maintain a writ of Covenant against the Lessor, although there be not any Assignee mentioned in the deed of Covenant.

Assignee shall have Covenant without being named. As two Coparceners one covenanteth to discharge the party other, the Alienee shall have Covenant.

D Also Administrators shall have a writ of Covenant as well as Executors.

E And the writ of Covenant ought to be brought where the Covenant was made. But if he bring it in another County, the Party shall not plead the same to abate the writ, unless the deed bear date in another County, and so the title of Covenant in the Abridgments were at large for that matter.

38 E. 3. 24. *Skipwith* and *Knevyt*, he shall recover damages only.

24 E. 3. 24. he shall recover his Term.

20 E. 3. Covenant 2. Ve. 9 Eliz. Dyer 257.

27 H. 6. Covenant 11.

17 H. 6. 10.

40 E. 3. 5.

[146]

42 E. 3. 3. *Kinchlen.* If the Covenant go with Land, the

26 H. 6. Covenant 9. although it bear date in other County, yet the Writ lieth where the Land is.

Covenant to levy a Fine.

THere is another manner of Covenant, which is more in the reality. And that Writ properly lieth where a man by deed granteth to another to levy a Fine to him and his heirs of certain Lands and Tenements, he to whom the grant is made ſhall have a Writ of Covenant againſt him to levy a fine of that Land, &c. and the form of the Writ is ſuch:

Rex Vic', &c. *Præcip.* A. *&c. quod*, &c. *teneat* B. *conventionem ſuam inter eos fact. de manerio de* N. *cum pertin.* Vel ſic: *de uno meſuagio & una acr. terr. pertin. in* N. *&c. & niſi*, &c.

46 E. 3. 4. 47 E. 3. 3. And the form of the Particulars in that Writ ſhall be uſed as the form is, as in a *Præcipe quod reddat* of Land, to put the Particulars in the ſaid Writ.

And if he who ought to levy the fine, and make the Conuſance, cannot come for ſickneſs or other reaſonable cauſe into Court, then he may ſue a Writ of *Dedimus Poteſtatem*, directed unto ſome Juſtice, that he go to him to take the Conuſance, and to certifie the ſame to the Juſtices of the Common Pleas, and the Writ of Covenant ought to be ſued before the *Dedimus Poteſtatem* be retorned in the Common Pleas; and the *Dedimus Poteſtatem* ought to recite that the Writ of Covenant is depending in the Common Pleas before the Juſtices; and the Writ ſhall be ſuch:

Rex dilecto & fideli ſuo, W. Rikhil *ſalutem. Cum breve noſtrum de convention. pendeat coram vobis & ſociis veſtr. Juſtic. noſtris de banco inter* A. *&* B. *&* C. *uxor ejus de una carucata terræ cum pertin. in* N. *ad finem inde inter eos coram vobis & ſociis veſtris prædict. de banco prad. ſecundum legem & conſuetudinem regni noſtri levand. ac præf.* A. B. *&* C. *adeo impotentes ſui exiſtant, quod abſque maximo ſuorum corporum periculo uſque ad* Weſtm. *ad diem in brevi prædict. contentum ad recognitiones quæ in hac parte requiruntur faciend. laborare non ſuſſeciunt, ut accepimus, Nos ſtatui eorund.* A. B. *&* C. *compatientes in hac parte, dedimus vobis poteſtatem recipiend. cognitiones quas prad.* A. B. *&* C. *coram vobis facere voluerunt in præmiſſ. & ideo vobis mandam. quod ad præf.* A. B. *&* C. *perſonaliter accedent. cognition. ſuas prad. recipiatis. Et cum eas receperitis præfat. ſocios veſtros inde diſtinctè & aperte reddatis certiores, ut tunc finis ille inter partes prædict. de tenementis prædict. coram vobis & ſociis veſtris prædict. in eodem banco levari poſſit, ſecundum legem & conſuetudinem prædict. & habeatis ibi tunc hoc breve. Teſte*, &c.

And

And if the *Dedimus Poteſtatem* be made unto any the Juſtices of the King's Bench, then the form of the Writ is ſuch:

Rex dilect', &c. W. *capital. Juſtic. noſtro.* Vel ſic: *Juſtic. noſtro*, &c. *Cum cuſtos domus vicariæ Eccleſiæ beati* Petri Ebor. *tulerit breve noſtr. de convent. verſus* H. *militem de advocatione Eccleſ. de* F. *ad finem inde inter eos coram Juſtic. noſtris de banco ſecund. legem & conſuetud. regni noſtri levand. ac idem cuſtos &* H. *adeo impotentes*, &c. (uſque ibi) *& cum eos receperitis præf. Juſtic. noſtros inde ſub ſigillo veſtro diſtincte & aperte reddatis certiores, ut tunc finis ille*, &c. (uſque ibi) *ſecundum legem & conſuetudinem ſupradict. mittend. eiſdem Juſtic. hoc breve. Teſte*, &c.

And if a man have divers Writs of Covenant depending againſt ſeveral perſons in ſeveral Counties, *&c.* he may have one Writ of *Dedimus Poteſtatem* directed to one Juſtice to take their Conuſance ſeverally, and to certifie them, *&c.* and the form of the Writ is ſuch:

Rex, &c. *Cum breve noſtrum de conventione pendeat coram vobis & ſociis veſtris Juſtic. noſtris in banco inter* E. *&* J. *de medietate manerii de* N. *cum pertin. & aliud breve noſtrum de conventione pendeat coram vobis & ſociis veſtris prad. inter ipſum* E. *& præf.* I. *de uno meſuagio*, &c. (& ſic de aliis, *&c.*) *ac fines inde inter eos*, &c. (ubi ſupra.)

And if a man ought for to levy a fine, and he is going in the King's Service, then he ſhall have a *Dedimus Poteſtatem* directed unto the Juſtices, to take his Conuſance. And ſo of a woman who is with Child; and the Writ ſhall mention the ſame: thus,

Rex, &c. *Cum breve*, &c. (uſque ibi) *ad finem*, &c. *ac præf.* W. *de mandato noſtro obſequio noſtro alibi intendat, & præf.* I. *pregnans ſit & gravida, ac prædict.* B. *languidus & impotens ſui exiſtit, per quod prædict.* W. *apud* Weſtm. *ad diem in brevi contentum venire non poteſt, nec prædict.* I. *&* B. *ad dict. diem & locum laborare non ſuffic. ad cognit.* &c. *Nos eidem* W. *grat. volentes facere ſpecialem in hac parte, & ſtatui eorundem* I. *&* P. *compatient. in hac parte.*

And if he in the reverſion will levy a fine of his reverſion unto another upon a Writ of Covenant ſued forth againſt him, the Conuſance ſhall be taken in the Common Pleas, but the fine ſhall not be engroſſed until the Tenant for life have attorned; and the fine is ſaid engroſſed, when the Chirographer maketh Indentures of the fine, and delivereth them to the party to whom the Conuſance is made, and then it is ſaid that the fine is engroſſed, and after that the Con-

fee ſhall not have a *Quid juris clamat* againſt the Tenant for life. But the courſe is, when he in the reverſion upon the Writ of Covenant ſued againſt him, maketh the Conuſance of the reverſion by fine, *&c.* then upon that the Conuſee ſhall have a *Quid juris clamat* againſt the Tenant for life; and if the Tenant for life be ſo weak that he cannot travel, then he may ſue a *Dedimus Poteſtatem* directed to the Juſtices to take his Conuſance, *&c.* and to certifie the ſame into the Common Pleas.

2 H. 5. 1. And the like Writ of *Dedimus Poteſtatem* ſhall be granted, where the Lord by fine granteth the Services of his Tenant unto another upon a Writ of Covenant ſued againſt him. If the Conuſee ſue a *Per quæ ſervitia* againſt the Tenant, then if he be weak, or ſick, he may ſue a *Dedimus Poteſtatem*, to take his Conuſance, *&c.* and to certifie the ſame, *&c.* But

4 Mar. Dy. 166. now the courſe is for to admit the Defendant in a *Quid juris clamat*, or *Per quæ ſervitia*, to make attorney after a Plea pleaded; and that eſpecially where he pleadeth ſueh Plea, that he ſhall forfeit his Eſtate, if it be found againſt him, *&c.* then it is clear, That he ſhall make attorney after the Plea pleaded; and the courſe is now to make attorney after pleading: and if he be adjudged to attorn, to award a *Diſtringas ad attornandum* againſt him, *&c.*

And if a man have a Writ of Covenant againſt one to levy a fine, and thereupon a *Dedimus Poteſtatem* directed to a Judge to take the Conuſance of the party, and the Judge doth take the Conuſance by force of the Writ, and will not certifie the ſame in the Common Pleas, then the party may ſue a *Certiorari* directed to the ſame Judge, reciting all the matter how he hath taken the Conuſance, commanding him by the Writ to certifie the ſame into the Common Pleas: and upon that an *Alias*, and *Pluries*, and Attachment to the Judge, if he will not certifie it or retorn it, or ſhew cauſe why he do not certifie it. And if the Judge be dead who took the Conuſance, he may have a *Certiorari* to his Executors, and an *Alias*, and *Pluries*, and Attachment, *vel cauſam nobis ſignifices*; and in the end of the Writ ſhall be this clauſe: *Et habeas ibi hoc breve, per quod cognitiones prædict. recepiſtis, & hoc breve. Mandamus enim Juſtic. noſtris de banco prædict. quod cognition. & brevia prædict. ſub ſigillo noſtro eis miſiſtis, quod ea à vobis recipiant. Teſte*, &c. And by that it appeareth, That although the *Certiorari* be ſent to the Judge to retorn the Conuſance taken before the Juſtices of the Common Pleas, that yet he ought to ſue forth another writ to be ſent and directed to the Juſtices of the Common Pleas, to receive

receive ſuch Conuſance taken: and the Writ of *Certiorari* which ſhall be directed unto the Juſtices of the Common Pleas to receive the Conuſance, are in the Regiſter amongſt the Writs of Covenants.

C And if a man will levy a fine of lands holden of the King in chief, then he ought to have a ſpecial writ unto the Juſtices of the Common Pleas; thus,

Rex Juſtic. ſuis de banco ſalutem. Cum per literas noſtras patentes de gratiâ noſtra ſpeciali conceſſimus L. *quod ipſe de maneriis ſuis de* N. *&* I. *cum pertin. quæ de nobis tenentur in capite feoffare poſſit* W. *&c. recitand, totam chartam* (uſque ibi) *prout in literis noſtris prædict. plenius contineatur, ac breve noſtrum de conventione pendeat coram vobis in banco prædict. inter præd.* I. *&* W. *de maneriis prædict. ad finem inde inter eos ſecundum legem & conſuetudinem regni noſtri levand. ut accipimus, Vobis mandamus, qd. finem illum inter partes præd. coram vobis in eodem banco levari permittatis juxta tenorem literarum noſtrarum prædict'*, &c.

D And if it do appear unto the Court, that the Lands are holden of the King in *Capite*, the Court *ex officio* ought not to ſuffer ſuch fine to be levied without ſuch a Writ directed unto them, declaring the King's pleaſure.

And there is another writ of *Certiorari* directed unto the Treaſurer and Chamberlains of the Exchequer, to certifie the tranſcript of a fine in the Chancery; and a Writ of *Mittimus* out of the Chancery directed to the Juſtices of the Common Pleas to tranſcribe the ſaid fine, *&c.*

And another form of writ of *Certiorari* directed unto the Chirographer, to certifie into the Chancery *tenorem cujuſdam notæ in Cur. Domini* E. *nuper Regis* Angliæ, *&c.* as appeareth in the Regiſter.

Writ of Dower unde Nihil habet.

29 Aſſ. 63 Bf. *Dow.* 63 Dower lieth not againſt Guardian in Socage, and therefore it is doubted if ſuch a Guardian ſhall aſſign Dower if there be a diſſeiſin.

E A Writ of *Dower, unde Nihil habet*, lieth in caſe where a woman taketh her husband who is ſole ſeiſed of Lands or Tenements to him and his heirs in Fee ſimple or unto him and the heirs of his body, *&c.* Or if the Husband during the Marriage betwixt him and his wife, be ſolely ſeiſed in Fee ſimple, or in Fee-tail of ſuch eſtate, that the iſſue begotten betwixt him and his wife may inherit the ſame, Then if the husband doth alien the ſame, or dieth ſeiſed thereof or be thereof diſſeiſed, and dieth, his wife ſhall have a Writ of *Dower, unde Nihil habet*, againſt him who is Tenant of the Freehold of the Land, or againſt him who is Guardian

Guardian in Knight's ſervice of the Land; and the form of the Writ is:

Rex Vic, &c. *Præc.* A. *quod juſte*, &c. *redd.* B. *quæ fuit uxor* C. *rationabilem dotem ſuam, quæ ei contigit de tenemento quod fuit prædict.* C. *quondam viri ſui in* N. *unde nihil habet ut dicit. Et unde queritur, quod præd.* A. *ei deforc. & niſi*, &c.

And againſt the Guardian the Writ is ſuch: *Præcipe* A. *Cuſtod. terræ & hæredis* J. *quod reddat*, &c. B. *quæ fuit uxor* C. *&c.*

Otherwiſe where the wife is endowed *ad oſtium Eccleſiæ.* Thus: *Præc.* A. *quod redd.* C. B. *quæ fuit uxor* C. *Centum acr. terræ cum pertin. in* N. *de quibus prædict.* C. *quondam vir ipſius* B. *eam dotavit ad oſtium Eccleſ. quando eam diſponſavit, unde nihil habet*, &c,

And if ſhe be endowed *de aſſenſu Patris*, then thus: *Præc.* A. *quod*, &c. *redd.* B. *quæ fuit uxor* C. *Centum acr. terræ*, &c. *de quibus prædict.* C. *filius & hæres ipſius* A. *quondam vir ipſius* B. *de aſſenſu & voluntate ipſius* A. *patris ſui eam dotavit ad oſtium Eccleſ.* &c. *unde*, &c.

Perkins 67, 68. common ſans numbr. & eſtovers. Old Na. Br. 5. 2 E. 3. Dower 23.

And the writ of Dower *unde nihil habet*, may be ſued in the County before the Sheriff by a *Juſticies*.

And if a wife ſhall be endowed of Advowſons, Villains; Commons of Paſture, and of other profit, or liberties, of which her husband had any eſtate of Inheritance; which eſtate the iſſue betwixt them by poſſibility may inherit, &c.

And the wife may ſue a writ of *Dower* of Lands or Tenements in *London*, and the writ ſhall be directed unto the Mayor and Sheriffs of *London*, and the writ ſhall be ſuch:

Rex Majori & Vic. Lond. *ſalutem. Præcip. vobis quod juſticietis* A. *quod juſtè & ſine dilatione, & ſecundum conſuetud. Civitatis noſtr.* London. *redd.* B. *quæ fuit uxor* C. *rationabilem dotem ſuam, quæ ei contingit*, &c. *in* Lond. *& juſtic.* D. *quod juſtè*, &c. *& ſecundum conſuetudinem*, &c. *reddat eidem* B. *rationabil. dotem ſuam*, &c. *in eadem Civitate, unde nihil habet*, &c. *ut dicit, & unde querit. quod prad.* A. *& Dei deforceant, rationabiliter monſtrare poterit, quod ei reddere debeant, ne amplius*, &c. *Teſte*, &c.

And by that it appeareth, That a Woman ſhall have a Writ of *Dower* in *London* againſt ſeveral Tenants by a ſeveral *Juſticies* in Writ, as well as ſhe ſhall have a writ of Dower againſt ſeveral Tenants by ſeveral *Præcipes*, and all in one writ. And the Proceſs is Sommons *Grand Cape* and *Petit Cape* in the Common Pleas.

Writ

Writ of Admeaſurement of Dower.

F THE *Writ of Admeaſurement of Dower* lieth, where the heir when he is within age endoweth the Wife of more than ſhe ought to have Dower of: Or if the Guardian endow the wife of more than of the third part of the land of which ſhe ought to have Dower, Then the heir at his full age may ſue this Writ againſt the Wife, and thereby ſhe ſhall be admeaſured; and the ſurpluſage which ſhe had in Dower ſhall be reſtored to the Heir, but in ſuch caſe there ſhall not be aſſigned anew any land to hold in Dower, but to take from her ſo much of the land which amounteth above the third part of all the land of which ſhe ought to be endowed.

And if the heir within age before the Guardian enter into the land, do aſſign to the wife more land in Dower than ſhe ought to have, then the Guardian ſhall have the Writ of *Admeaſurement* againſt the wife by the Statute of *Weſt.* 2. *cap.* 7. And if the Guardian bring the Writ and do purſue it againſt the wife; yet the heir at his full age by the ſame Statute ſhall have the *Writ of Admeaſurement of Dower* againſt the wife.

And the Writ is *Vicontiel*, and ſhall be ſued in the County before the Sheriff, and the Writ is ſuch:

G *Rex Vic'*, &c. *Queſtus eſt nobis* A. *filius & hæres* B. *quod* C. *quæ fuit uxor prædict.* B. *plus habet in dotem ne libr. tenem. quod fuit prædict.* B. *quondam viri ſui in* N. *quam habere debet, & ad ipſam pertinet habend. Et ideo tibi præcipimus, quod juſtè & ſine dilatione Admenſurari fac dotem illam, ita quod prædict'* C. *non habeat plus in dotem de hæred. prædict.* A. *quam habere debet & ad ipſam pertinet habend. ſecund. rationabilem dotem ſuam. Et prædict.* A. *habeat de dote illa, id quod habere debet, & ad ipſam pertinet habend. ne amplius*, &c. *Teſte*, &c.

And for the Guardian the Writ is ſuch: *Queſtus eſt nobis* A. *Cuſtos terr. & hæred.* C. *quod* C. *quæ fuit uxor prad.* E. *plus habet in dotem ipſius*, &c. (uſque ibi) *ita quod prad.* C. *non habeat plus in dotem de hæred. prædict. hæredis quam habere debet*, &c. *Et quòd prædict. cuſtos habeat de dote illa*, &c. *ne amplius*, &c. *Teſte*, &c.

H And when the plea is in the County, the plaintiff may remove it without cauſe; and the Defendant may remove it with cauſe in the writ, as in a Replevin. And if the writ be removed in the Common Pleas by a *Pone*, and proceſs be awarded againſt the Defendant according to the Statute, which

which is Summons, Attachment and Diſtreſs, *&c.* Then the Sheriff cannot make the Admeaſurement, but to extend all the land particularly; and to return the ſame into the Common Pleas, and thereupon the Admeaſurement ſhall be made by the Juſtices.

And if the Guardian aſſign for Dower, *&c.* more than ſhe I ought to have, and afterwards grant over his Eſtate, his Aſſignee ſhall not have a Writ of *Admeaſurement:*

And ſo if the heir within age aſſign unto the Wife more in Dower than ſhe ought to have, *&c.* The Guardian in Right may have a Writ of Admeaſurement, but if he grant over his eſtate, his Aſſignee who is Guardian in *Fair* ſhall not have the Writ, becauſe it was a thing in action given to his Leſſor, *&c.* and the heir ſhall have a Writ of *Admeaſurement of Dower*, for Dower aſſigned in the time of his Anceſtor.

Perk. 19. d. 7 H. 2. Admeaſurement 4.

And if a woman be endowed in Chancery by the King, A *&c.* the heir ſhall have a Writ of *Admeaſurement* againſt her if ſhe have more aſſigned to her for her Dower than ſhe ought for to have.

12 H. 6. Admeaſurement 9.

And if the Guardian do aſſign Dower more than ſhe B ought to have, the heir during his non-age ſhall not have a Writ of Admeaſurement, but if he himſelf aſſign more for Dower than ſhe ought to have, *&c.* then it ſeems reaſonable, that he himſelf during his non-age have the Writ of *Admeaſurement* of Dower.

7 E 2. Admeaſurement 13.

But if the wife after the aſſignment of Dower do improve C the Land, and make it better than it was at the time of the aſſignment; an Admeaſurement doth not lie of that improvement. But if the improvement be by caſualty of a Mine of Coals or of Lead, which are in the Land, *&c.* which have been occupied in the husband's time, the doubt is the more, but ſhe cannot dig new Mines; for that ſhall be waſte if ſhe ſo doe.

And if the Aunceſtor dieth ſeiſed, and the husband die D before he entreth into the Land, yet the wife ſhall be endowed, although her husband had but a poſſeſſion in Law.

Perkins 89. 8 H. 7. 5. 21 E. 3. 21.

But a man ſhall not be Tenant by the Courteſie of the wifes Land, if his wife had not a poſſeſſion in deed, if it be not in ſpecial Caſes; as of Advowſon or Rent, where ſhe dieth before the day of paiment of the Rent.

And in that caſe, if the King's Tenant die ſeiſed, and the heir die before he enter; then the wife ſhall be endowed.

But

But if the Heir enter and intrude upon the King's poſſeſſion, and afterwards die before he ſueth his Livery; The Wife ſhall not be endowed by the Statute of *Prerogativa Regis*, cap. 12. which is, that if the heir intrude upon the King's poſſeſſion, that *Nullum accreſcit ei liberum tenementum*, &c. 1 H. 7. 17. 4 H. 7. 1.

E Where a woman taketh a Leaſe for years of Land; ſhe ſhall not be endowed of the ſame land during the Term. 2 H. 4. 7. Perkins 69. d.

F And where the eſtate which the Husband hath during the marriage is ended, there the wife ſhall loſe her Dower. As if Tenant in tail do diſcontinue in Fee, and afterwards taketh a Wife and diſſeiſeth the Diſcontinuee, or the Diſcontinuee doth enfeoff him, and afterwards the Tenant in tail dieth ſeiſed, his heir is remitted, and the wife ſhall loſe her Dower, becauſe the heir is in of another eſtate of Inheritance, than the Husband had during the Coverture.

And ſo if a man have title of Action to recover any land, and afterwards he entreth and diſſeiſeth the Tenant of the Land, and dieth ſeiſed, and his heir entreth, The heir is remitted unto the title which his Auncеſtor had, and the Husband's wife ſhall loſe her Dower; for that eſtate which the Husband had is determined, for that was an eſtate in Fee by wrong, and the heir hath the eſtate in Fee which his Auncеſtor had by Right.

G If a man make a gift in tail, reſerving Rent to him and his heirs, and afterwards the Donor hath a wife, and the Tenant in tail dieth without iſſue, The wife of the Donor ſhall not be endowed of the Rent, becauſe the Rent is extinct, for it was reſerved upon the ſtate tail which is ended: But although that the Tenant in tail dieth without iſſue; yet his Wife ſhall be endowed, becauſe the Land continueth and is not determined as the Rent is. 10 E. 3. Avowry 159. Perk. 63. d. 46 E. 3. 24. *Finchden.*

H If the Grandfather dieth ſeiſed, and after the Father dieth ſeiſed, and the Son hath the Land, and then the wife of the Grandfather is endowed of the third part of the land and dieth, yet the wife of the Father ſhall not have Dower of that third part, becauſe *dos ex dote peti non debet.* Perkins 62. 45 E. 3. 13.

I And if the Husband be Tenant in Common with two other in fee of certain lands, and dieth, his wife ſhall be endowed of the third part of that land, only with metes and bounds to hold in Common, *&c.*

K And if a wife be endowed of a Mill, or of an Office, ſhe ſhall have the third part of the profits thereof aſſigned unto her, and ſhe ſhall have a Freehold in the third part of the Mill, *&c. M.* 45. *E.* 3. 45 E. 3. Dower 50 1 H. 5. 1. Perkins 67. b.

Litt. 8. 12 H. 4. 1. Dr. & Stud. 13.

A woman of the age of 9 years or more at the death of her Husband ſhall have Dower of his land. And if ſhe be of leſs age at the death of her Husband, then ſhe ſhall not have Dower.

If a woman be endowed, and afterwards loſeth by action tried, if ſhe pray in-aid of him in the reverſion, ſhe ſhall be new endowed of that which remaineth.

If the husband exchange land, *&c.* and afterwards dieth, if the wife have Dower of the third part of the land taken in Exchange, ſhe ſhall not have Dower of the other Land, *&c.* which was given in Exchange.

If a woman be Guardian-in Socage, and ſhe bring a writ of Dower againſt a ſtranger, he may plead, that ſhe holdeth other land in Socage of which ſhe may endow herſelf, *de le pluis beale*, and then the wife upon that may endow herſelf of thoſe lands unto the value of the third part which ſhe ought to have of the other lands which the Guardian holdeth, *&c.* And whether ſhe may endow her ſelf of the *pluis beale* unto the value of the third part which ſhe ought to have of her Husband's land or no, *Quare*; for ſome hold, That Dower *de pluis beale*, ſhall endure but during the minority of the Heir who is in ward.

Litt. 10. d. That he hath a Freehold. 45 E. 3. 6. Candiſh. ac. to this here.

The Son would have endowed his wife of a Reverſion of land which one held for life, *ex aſſenſu patris*; and it was holden that it was not good, *M.* 4 E. 3. becauſe it was not in poſſeſſion; whereof a Right of Dower may be claimed.

And the writ of Dower *ex aſſenſu patris* lieth as well againſt the Guardian, as againſt the Tenant of the Freehold.

22 E. 3. Dower 131. Perk. 64. 2.

If the Tenant forejudge the *Meſn*, yet the wife of the *Meſn* ſhall be endowed.

If a man recover in value againſt the Husband by a warranty *Auncеſtrel*; yet the wife ſhall be endowed, becauſe the ſame is by force of the warranty made, and not by reaſon of Eigne Title to the land.

5 E 3. Dower 139.

The younger Son ſhall not aſſign Dower to his wife *ex aſſenſu patris* of the Father's land, becauſe he is not heir apparent.

If the husband enter into Religion, the wife ſhall not have Dower during his life.

Perk. 68. 2. 18 E. 19. Dower 161.

The wife ſhall have the third part of the Advowſon for her Dower.

If the wife do elope from her husband, and remain with the Adulterer ſhe ſhall loſe her Dower? But if ſhe remain in Adultery upon the husband's Lands or Tenements, ſhe ſhall

43 E. 2. 19. Perkins 7. b.

ſhall have Dower, becauſe the ſame is not an Elopement.

I If the Husband be attainted of Felony by Outlawry or otherwiſe, ſhe ſhall loſe her Dower.

K If one Joyntenant make a Feofment of his part, his wife ſhall not be endowed becauſe her Husband was never ſole ſeiſed.

L Endowment *ex aſſenſu matris* is good; but *ex aſſenſu fratris*, it's holden it is not good.

And Dowment *ex aſſenſu patris* after the Marriage is good. 3 H. 6. 4. Leſſee for life maketh a Feofment in Fee, his Wife ſhall have Dower againſt the Feoffee, but not againſt the Leſſor.

M If a man marry a woman in a Chamber, Dowment *ad oſtium Camera* is not good.

N Dowment *ad Oſtium Eccleſia* of the moiety of the Land, is good.

And a woman married in a Chamber ſhall not have Dower by the Common Law, *H.* 16. *H.* 3. *Quare* of marriages made in Chappels not conſecrated, *&c.* for many are by Licence of the Biſhop married in Chappels, *&c.* And it ſeemeth reaſonable, That in ſuch caſes ſhe ſhall have Dower.

O And in ſome places the wife ſhall have the Moiety in Dower; as in Gawelkind.

P And in ſome Cities ſhe ſhall have all by the Cuſtome which is called Free-bench, *&c.* And *Glanvil* ſaith, That *ad oſtium Eccleſia*, a man cannot aſſign more than the third part in Dower, and if he do the wife ſhall be admeaſured, *&c.* but leſs may be aſſigned by Law; yet at this day it ſeemeth, That the aſſignment *ad oſtium Eccleſia* of more than the third part is good, and ſhe ſhall not be admeaſured for it.

Q And the wife ſhall not be diſtrained in the lands which ſhe holdeth in Dower, for the debts of the Husband in his life due to the King, nor in the lands of inheritance of the wife, nor in the lands which ſhe hath by purchaſe made by the husband to him and his wife, and unto their heirs; And if ſhe be diſtrained by the Sheriff, ſhe may ſue forth ſuch writ.

Rex Vic', &c. *Cum ſecund. legem & conſu. Regni noſtri* Angl. *mulieres in terris & tenement. qua tenent in dotem de dono vir. ſuorum, vel qua ſunt de hæreditate ſua, vel q. ſibi perquiſer, pro debitis virorum ſuorum reddend. diſtringi non debeant, ac tu* B. *qua fuit uxor* A. *diſtringis in terris & tenement. ſuis, qua tenentur in dotem de dono prædict.* A. *& etiam quam fuer. de hæred. ipſius* B. *ſicut ex querela ſua accipimus: Tibi præcipimus, quod ipſum* B. *in terr. & tenemen. ſuis qua tenentur in dotem, vel ſunt de hæreditate ſua propria, vel ex quæſito ipſius* B. *pro debito ipſius*

ipſius A. quondam viri ſui redd. non diſtringi fac. contra legem & conſuetudinem prædict. & diſtrictionem ſi quam, &c. *eijdem liberari fac.* &c. *Teſte,* &c.

There is another form of Writ in the Regiſter for Tenant in Dower, which is directed unto the Sheriff, commanding him that he do not diſtrain the wife in thoſe lands which ſhe holdeth in Dower, or of her own Inheritance for the Husbands debt; but that writ hath theſe words in the end of the Writ, *Dum tamen hæredes & executores teſtamenti ipſius A. ad debita illa nobis reddend. ſufficiunt non diſtr.* &c. And by theſe words in the Writ it ſeemeth that if the heir of the Executors have not ſufficient of Lands or Goods to pay the debt, that the wife ſhall be charged and diſtrained for the debt of the husband in thoſe lands. But it ſeemeth reaſonable that the wife ſhall not be charged or diſtrained for the joynt purchaſe made to her husband and her, nor for her Lands of Inheritance, nor in the lands wherein ſhe hath title of Dower before the husband become indebted to the King. And that the firſt writ is according to the Law for thoſe caſes. But if the husband be indebted unto the King before ſhe have title of Dower, it ſeemeth to be otherwiſe.

And there is another writ in the Regiſter for the wife directed to the Sheriff, that he do not diſtrain her in lands or Tenements which her husband and ſhe purchaſed joyntly before the husband was indebted to the King, if they purchaſe the land joyntly to them in Fee, the lands after the death of the husband in the hands of the wife and her heir ſhall be diſcharged of the debt, and if he be diſtrained that he deliver them again to the wife.

And by the ſame reaſon, although the husband be before indebted to the King, that if he and ſhe purchaſe the Land joyntly in Fee to them, after the death of the husband, the wife and her heirs be diſcharged of that debt. And there is another writ in the Regiſter, for the Tenant in Dower, directed to the Sheriff, that he do not diſtrain the wife for the husband's debt, becauſe that the heir who ought to pay the ſame out of the lands is within age, and in ward to the King. Or becauſe that other Tenants who ſhould be charged with the payment thereof, are omitted.

And ſo it ſeemeth the lands of the Tenant in Dower ſhall be diſcharged if there were other lands of the husband to pay the debt. And thoſe Writs appear in the Regiſter. fol. 142, 143.

And

A * And another Writ directed to the Sheriff, that he do not distrain the wife who holdeth Lands in Dower for the debts of the husband which he owed to the King before the contract of marriage between him and the wife, nor the Lands which the husband and wife purchased jointly in Fee for the husband's debts which he became debtor for, before the purchase. And she may have such Writ out of the Chancery directed unto the Treasurer and Barons of the Exchequer, commanding them that they enquire thereof, and if they find the same, that they surcease and discharge the wife with this Proviso in the Writ: *Proviso, Quod debita illa de execut. & hæred. prad.* A. *ac tenentibus terrarum quod sua fuer. & que inde de jure debent onerari ad opus nostr. levent. ut justum est: Teste*, &c. [151]

* Ve. 50 Ass. 5. Br. Charge 34. the husband & wife before marriage purchase a lease for years, the husband dieth, the lease extended for the King's debt.

Writ de Consuetudinibus & Servicijs.

B THE Writ of Customs and Services is in its nature a Writ of Right, and lieth sometimes for the Lord who hath a Fee in the Seigniory, and sometimes for the Tenant in Tail of the Seigniory, or for Tenant in Dower, or Tenant for life, or for him who hath a less estate than a Fee, and the Writ is close, and not Patent, and shall be directed unto the Sheriff, and shall be returnable sometimes into the Common Pleas at the pleasure of him who sueth the writ. And that writ may be sued in the County before the Sheriff by a *Justicies*.

C And the Writ lieth where the Tenant doth deforce the Lord of the Services which he ought to doe, or of the Rent which he ought to have, as well as of Service. And the form of the Writ which is returnable in the Common Pleas is;

D *Rex Vic'*, &c. *Prac.* A. *quod*, &c. *faciat* B. *consuetud. & servic. quod ei facer. debet de libero tenemento suo, quod de eo tenet in* G. *ut in redditibus, arreragiis, & aliis.* Vel sic; *In Homag. releviis & al.* Vel sic; *In sectis cur. & aliis: & nisi*, &c.

And if the party were not seised of the Services and Tenements which he claimeth, but his Ancestor, then he shall not say in the Writ, *ut in arreragiis*, &c. but omission shall be made in the Writ of the Services.

E And if the Writ be sued in the County before the Sheriff, then the Writ is such:

Rex Vic', &c. *Justicies* A. *quod*, &c. *fac.* B. *conf. & rect. servic.* &c. ut supra, *sicut rationabiliter monstrar. poterit, quod*, &c. *ne amplius*, &c.

F And a man may sue several Tenants by one Writ of Customs and Services by several *Præcipes* in the Common

Pleas, or by one Writ and diverſe *Juſtiſies*, in the Writ which ſhall be directed unto the Sheriff to hold plea upon them. But if the Writ of Cuſtoms and Services be ſued againſt ſeveral Tenants by ſeveral *Præcipes* in the Writ, and returned into the Common Pleas, then all the *Præcipes* ſhall be put together thus. *Præcipe* A. *quod fac.* B. *&c. Et præc.* C. *quod*, &c. *fac.* D. &c. *Et præc.* F. *quod*, &c. *fac.* G. *&c.* And in the laſt *Præcipe*, ſhall be put this clauſe, *In redditibus & aliis*, and this word *arreragiis* ſhall be left out.

2 E. 2. Fitz Droit 28. And when the writ is in the Right onely, then he ſhall G count of the ſeiſin of his Anceſtor, and the writ onely in the *Debet*; But when he counts of his own ſeiſin, then the writ is in the *Debet & ſolet*, &c.

N. B. 18. the Diſclaimer ought to be in a Court of feud and not in the County. And diſclaimer lieth for the Tenant in this writ againſt H the Demandant.

And note that if he ſay in the writ, *Ut in redditibus &* I *arreragiis*, that thoſe words prove that the Demandant himſelf was ſeiſed of the ſervices, and then if he count in ſuch writ of the ſeiſin of his Anceſtors, and not of his own ſeiſin, the writ ſhall abate, *quod ve. &* E. 1. *title Droit.*

But if he will bring a writ of Cuſtoms and Services of the K ſeiſin of his Anceſtors, he ought to leave out thoſe words out of the writ, *Ut in redditibus & arreragiis*, &c.

And a writ of Cuſtoms and Services doth not lye againſt Tenant in Frank-marriage, until the fourth degree be paſt, *&c.* if not, that he hath done homage to the Lord, *&c.* for by ſo doing he is concluded, *&c.*

And if a man will bring a writ of Cuſtoms and Services L againſt any Tenant, and by his Count demand homage, then the writ ought to make ſpecial mention thereof, or as to ſay, *Ut in homagio*, &c. otherwiſe the writ ſhall abate.

And if a man holdeth divers Manors in ſeveral Counties N by one Service, *&c.* if the Lord be deforced or kept from his Services, he ſhall have ſeveral writs of Cuſtoms and Services, for each County one writ, and ſhall have them returned at one day, in the Common Pleas, and then he ſhall count upon them, as his caſe is, which ſee in the title of *Droit* 30 E. 1.

And note that this writ is a *Præcipe quod faciat*, &c. and N where he demandeth Land, then the writ is *Præcipe quod reddat*, &c. and in this writ the miſe ſhall be joyned, if the writ be brought by Tenant in fee of the Tenancy by him who hath a Fee in the Seigniory. But if the writ be brought by Tenant in dower, or Tenant in tail, againſt the Tenant in Fee-ſimple, it is a queſtion how the miſe ſhall be joined. But, I think, the miſe ſhall be joined in that caſe,

caſe, and the weakneſs of the eſtate on the part of the demandant ſhall not out the Tenant of the Plea, which the Law giveth him to join the miſe, but if the Writ be brought againſt Tenant for life, where the remainder is over in Fee, there the Tenant may pray in aid of him in the remainder, and then they may join the miſe with the demandant, *&c.* But where the demandant, who hath the particular eſtate, bringeth the Action, although he pray in aid of him in the reverſion to join the miſe, it is hard to be done, *&c.* But it ſeemeth reaſonable, that the ſame law which enableth him to bring the action, the ſame law ought to enable him for to join the miſe upon the Plea of the Tenant.

Writ of Annuity.

A Writ of Annuity lieth in caſe; Where a man granteth unto another a yearly rent for life, or for years, or in Fee out of his Lands, or out of his Coffers, or to receive from his perſon yearly at a certain day. Now the grantee may ſue a Writ of Annuity for the ſame, *&c.* if he be behind at the day of payment, *&c.* And if it be granted out of the Land with a clauſe of diſtreſs, then he may chuſe either to diſtrein for the ſame, and make it a rent charge, or he may bring a Writ of Annuity for the ſame. But if he bring a Writ of Annuity for it; if the Defendant appear, and the Plaintiff declare thereupon, then he cannot diſtrain for it after. And in like manner, if he do diſtrein for it and avow, then he ſhall not ſue a Writ of Annuity for the ſame rent. But if a man grant a yearly rent for life, for years or in Fee, and doth not expreſs in the grant that it ſhall be taken out of any Lands or Tenements, nor any diſtreſs granted for non-payment thereof, then it is meerly taken for an Annuity; and he ſhall not have any other remedy for the ſame, but a Writ of Annuity.

B And this Writ may be ſued before the Sheriff in the County by *Juſticies* as well as in the Common Pleas, and the form of the Writ in the County is ſuch:

Rex Vic, &c. *Præc' tibi, quod juſticies* A. *quod juſte*, &c. *redd.* B. *centum marcas, decem quarteria frumenti, & xx. robas, quod ei à retro ſunt de annuo redditu* C. s. *duorum quart. frumenti, & unius robæ, quæ ei debet, ut dicit, ſicut rationabiliter monſtrare poterit, quod ei redder. debeat, ne amplius,* &c.

The Plaintiff in Annuity had Judgement to recover damages, and thereupon brought a *Scire Facias* B. R. to execute judgment, and good. 24 E. 3. Fitz Meſne.

24 H. 6. 20. 8 H. 6. Annuity 2. 16 E. 3. Annuity 22. If a man bring Annuity and the same extinguish or determine pendent the Writ, the Plaintiff cannot have Judgment in that Writ, but is put to his Action of Debt.

And the form of the Writ in the Common Pleas is: *Rex Vic'*, &c. *Pracipe* A. *quod juste*, &c. *redd.* B. *cent. marc. & medietatem trium pannorum, cum pellura, & duorum pannorum cum sindone, quod ei à retro sunt de annuo redditu decem marcar. & medietatis unius panni cum furrura, & unius panni cum sindone, quod ei debet*, &c. *& nisi*, &c.

And note, that in that Writ the form is, *Quem ei debeat*, C where he demandeth other thing than money. And yet in a Writ of Debt, the form is, that he say in the Writ, *Quas ei debet*, if not, that he demand money, for if he demand Robes or Corn, or such like Chattels; the Writ shall be, *Qua vel quas ei detinet*, and not *debet*, &c.

And in Debt if a man demand Money, and also ten Quarters of Wheat, then the form of the Writ is:

Prac. A. *quod juste*, &c. *redd.* B. *decem libras*, &c. *quas ei debet, ac dec. quarteria frumenti quæ ei injustè detinet*, &c.

9 H. 6. 12, and 13. And if a man have an Annuity of 20 *l.* to receive of A. D and he grant 10 *l.* of the same to another man to receive of *A. A.* shall not be charged by that grant, but the Grantor onely by writ of Annuity: But if he had granted 10 *l.* parcel of the said Annuity, it seemeth then that the Grantee ought to charge him who ought to pay the 20 *l.* by a writ of Annuity.

And the writ of Annuity ought to be brought in the County where the Grant was made; But an Annuity to receive E from a man of Religion, or a body Corporate, or from a Church, ought to be brought where the Church or house is, or where the seisin is alledged.

49 E. 3. 5. *&* 15 E. 4. 26. *And* the heir shall be charged by a writ of Annuity upon F the Grant of the Father if he have Assets by descent. But an Annuity shall not be maintainable against the heir by prescription, because it cannot be known whether he hath by descent from the same Ancestor, *&c.* by whom the Annuity was first granted.

Ve. 14 H. 4. 38. And the writ of Annuity shall be maintainable against a G Parson upon a Grant made by his Predecessor, with the assent of the Patron and Ordinary; and so upon an Ordinance made by the Ordinary without the Patron, if he have *Quid pro quo*.

And Annuity granted by the Bishop with the confirmation of the Dean and Chapter, shall bind the Successor of the Bishop.

And

H And if a man grant unto another 40 *s.* or a Robe yearly at ſuch a day, *&c.* after the day he may demand the one or the other at his Election.

And an Annuity ſhall be maintainable by a Parſon againſt a Vicar, upon an Ordinance of the Ordinary, if he have *Quid pro quo.* 16 E. 3. Annuity 34. 20 E. 3. Annuity 32.

I Upon debate of an Advowſon between a Prebend and a Prior, the Ordinary made a Compoſition and Ordinance, that the Prebend ſhould have an Annuity of 20 *s.* and the Prior the Advowſon for ever, and that did charge the Prior in a writ of Annuity and his Succeſſors, *T.* 9 *R.* 2.

K And in the time of vacation the Patron and Ordinary may by their Grant charge the Church for ever, as appeareth in the ſame year. 1 Ma. Dyer, 92.

L And if the King grant one an Annuity for life or years he ought to expreſs in the grant by whoſe hands he ſhall receive the Annuity, as to ſay, *Per manus Vic. de S. vel ball. noſtror. de manerio noſtro de* S. and then the Bailiff or Sheriff ſhall have allowance upon his Patent ſhewed, if he hath paid the ſame, and if he have not ſuch words in the Grant of Annuity, the Grant is void, for he cannot ſue the King for it, and no perſon is bounden to pay the ſame unto him, if he A be not expreſſed and named in the Patent, *&c.* And the Proceſs in a Writ of Annuity is Summons, Attachment and Diſtreſs. And for default of Diſtreſs, *&c.* Proceſs of Outlawry, by the new Statute made, *Ann.* 23 *H.* 8. *cap.* 14. 9 H. 6. 33. If a man grant 10 *s.* parcel of Annuity of 20 *s.* and in truth there is no ſuch Annuity, the grant is void. But if it be granted to receive out of ſuch a Sum, and there is no ſuch Sum, yet the ſame is good to charge the perſon of the Grantor. Ve. Annuity 5. to receive in 10 *l.* or *de* 10 *l.* no difference.

Writ de Procedendo ad Judicium.

B THE Writ to proceed unto Judgment lieth where Judges of any Court delay the party, Plaintiff or Defendant, that they will not give Judgment for him when they ought ſo to doe, *&c.* then the party grieved, ſhall have this writ directed unto the Judges, and the form of the writ is ſuch:

Rex Majori & Vic. Lond. *ſal. Quia redd. judicii loquela quæ eſt coram vobis in Huſtingo noſtro* Lond. *ſine brevi noſtro inter* A. *&* B. *de quadam tranſgreſſ. eidem* A. *per præf.* B. *illat. ut dicitur, diutinam cepit dilation. ad grave damnum ipſius* A. *ſicut ex querela ſua accepimus, vobis præcipimus, quod ad judicium inde redd. cum ea celeritate, qua ſecundum legem & conſuetud. civitat. præd. fieri poterit procedat. Teſte,* &c.

And upon that Writ he ſhall have an *Alias* and a *Pluries* C directed unto them, if they will not proceed, and afterwards an Attachment upon that directed to the Coroners, *&c.* returnable into the King's Bench or Common Pleas, and it ap- D peareth by the Writ that it lieth as well againſt Judges of Record as other Juſtices.

1 Ma Dyer 10. the opin. cont. If a man pray in aid of the King in a real action, and the E aid be granted, it ſhall be awarded, that he ſue unto the King in the Chancery, and the Juſtices in the Common Pleas ſhall ſtay until the Writ of *Procedendo in loquela* come unto them.

And then they may proceed in the Plea, until it become that they ought to give Judgment for the Plaintiff, and then the Juſtices ought not to proceed unto Judgment, until the Writ cometh to them to proceed to Judgment, which is called a writ *De procedendo ad judicium.*

37 H. 8. 9. Eliz. Dyer, 257. 258. Ve. 28 H. 6. 4. And ſo it is, if the Defendant in a perſonal action pray in aid of the King, and the aid be granted, now the Judges ought not to proceed until *Procedendo in loquela* comes unto them, and then they may proceed and try the iſſues joined; But yet they ſhall not give Judgment until a writ cometh to them to proceed to Judgment.

And if the King by his writ certifie to the Juſtices that F the lands are ſeiſed into his hands, *&c.* then they ſhall ſtay until the writ *De procedendo in loquela* be afterwards ſent unto them.

And ſo, if it appear to Judges of Record, that the lands are ſeiſed into the King's hands, or if it appear to the Court by pleading or ſhewing of the party, that the King hath intereſt in the Land, or ſhall loſe Rent or Service, there the Court ought to ſtay until they have from the King a *Procedendo in loquela*, and if the *Procedendo* be directed unto any of the Judges to proceed, it is good, although it be not directed unto them all.

And if a man have aid of the King, the *Procedendo* ought to make mention of the aid prayer, and recite the ſame in the writ, commanding them for to proceed in the plea, otherwiſe it is not good.

And if Conuſance of plea be granted, *&c.* in an action real G ſued in the Common Pleas, and afterwards in the Franchiſe, the Tenant pray in aid of the King upon a good cauſe, and hath the aid granted; the *Procedendo* ſhall be parted to them in the Franchiſe.

And if the King write unto the Juſtices to prorogue the H Aſſiſe becauſe the Defendant is in his Service, yet the Juſtices ought to proceed, and not to ſtay for the ſame.

And

I And if verdict paſs for the Plaintiff in Aſſiſe of *Novel diſſ.* before the Juſtices of Aſſiſe, and before they give Judgment by a new Commiſſion new Juſtices are made, then the Plaintiff in the Aſſiſe may ſue forth a *Certiorari* directed unto the other Juſtices to remove the Record before the new Juſtices, that they may proceed unto Judgment, and the form of the writ is ſuch:

Rex dilect. & fidel. ſuo E. *ſalutem. Monſtravit nobis* H. *quod cum ipſe nuper arrain. quando aſſ. novel. diſſ. coram dilect. & fidelibus noſtris* H. *de* T. *&* B. *nuper Juſticiariis noſtris ad aſſ.* &c. *aſſign. per breve noſtrum verſus* R. *&c. & alios*, &c. *contentos, de tenementis in* L. *ac licet vos & præfat.* B. *aſſ. illam ſecundum legem & conſuetudinem regni noſtri ceperitis, judic. tamen ſuper veredicto aſſ. prædict. pretextu cujuſdam commiſſionis noſtræ, dilectis & fidelibus noſtris* I. *de* C. *&* I. *de* I. *de omnibus aſſ. juratis & certificatis coram quibuſcunque Juſticiariis noſtris in Com. prædict. per brevia noſtra arrain. capiend. poſtmod. facta. adhuc reſtat reddendi in ipſius* H. *damnum non modicum & gravamen, per quod expediens eſt & neceſſe, quod prædict.* I. *de* C. *&* I. *ſuper record. & proceſſ. aſſ. prad. coram vobis & præf.* B. *habit. certiorent. vobis mand. quod rec. & proc.* &c. *tangentibus præf.* I. *de* C. *&* J. *ſub ſigillo veſtro diſtinct & aperte ſine dilatione mittatis, & hoc breve. Mandamus enim* I. C. *&* I. *quod receptis & viſis record. & proceſſ. prad. ad judicium præd. ſecundum legem & conſuetudinem regni noſtri procedant. Teſte*, &c.

And the party Plaintiff may ſue another writ unto the new Juſtices, that when the record is ſent unto them by the old Juſtices, that they receive and look upon the Record, and then to proceed to Judgment, and the form of the writ is ſuch:

Rex dilectis & fidelibus ſuis R. *de* C. *&* I. *de* I. *& Juſtic. ad aſſ.* &c. *aſſign. ſalut.* &c. *Monſtravit nobis*, H. *&c.* (ut ſupra, uſque ibi) *coram dilectis & fidelibus noſtris* I. B. *& vobis præf.* I. *de* C. *nuper Juſticiariis noſtris*, &c. *de tenementis in* L. *& poſtmod. ad proſecutionem ipſius* H. *nobis ſuggerent. præfat.* B. *& vos præf.* I. *de* C. *aſſ. illam cepiſſe, & ad judicium*, &c. *diſtuliſſe, mandavet. præfat.* B. *quod record. & proceſſ. aſſ. prædict. coram eo & vobis præf.* R. *de* C. *habit. una cum brevi originali*, &c. *vobis præfat.* R. *de* C. *&* I. *de* I. *dilecto & fideli noſtro* C. *de* L. *poſtmodum Juſtic'*, &c. *aſſign. diſtinct & aperte mitter. & breve noſtrum quod ſibi inde venerit, vobis & præfat.* R. *de* C. I. *de* I. *& præfat.* C. *de* L. *per aliud breve noſtrum dederimus in mandat. quod receptis & viſis record. & proceſſ. prædict. ad judicium prædictum*

[154]

ſecundum legem & conſuetudinem regni noſtri reddend. procederetis. Et licet idem B. *record. & proceſſ. aſſ. præd. coram vobis præfat.* R. *de* C. I. *de* I. *& præf.* C. *de* L. *miſiſſet, Judiciis tamen aſſ. præd. adhuc reſtat reddend. in ipſius* H. *damnum non modicum & gravamen; Nos ea de cauſa negotium prædictum, quatenus ſecundum legem & conſuetudinem regni noſtri poterit, maturari volentes, & idem* H. *ulterius inde fieri juſtitiæ complementum: vobis mandamus, quod vos vel duo veſtrum viſis & examinatis record. & proceſſu præd. ad Juſtic. præd. ſecund. legem & conſuetudinem regni noſtri reddend. procedatis. Teſte,* &c.

And upon that Writ if the Juſtices do delay to give Judg- A
ment he may have an *Alias*, and afterwards a *Pluries* directed unto the ſame Juſtices, *vel cauſam nobis ſignificetis*; and if the Juſtices upon the Writ will not give Judgment according to the Writ; *Quære* whether the Plaintiff may have an Attachment againſt them, becauſe they are Juſtices of Record.

But ſee in the Regiſter amongſt the Writs to remove Re- B
cords, many Writs to proceed to Judgment, *&c.* of ſeveral forms.

And if the Chaplain of a Chauntry bring an Aſſiſe of *Novel* C
diſſ. againſt another Chaplain for lands, and the Defendant claimeth the ſame Chauntry by the King's Collation, and prayeth in aid of the King. Now if the Defendant cannot ſhew title in the Chancery for the King, he may have a *Procedendo*, directed unto the Juſtices of Aſſiſe, that they proceed unto the taking of the Aſſiſe, notwithſtanding the allegation made of the King's Collation; and he may ſue the like Writ where the Defendant doth pray in Aid of the King in Aſſiſe by the King's grant, and have that granted if he cannot ſhew matter in the Chancery, which proves the King's Title; the Plaintiff ſhall have a *Procedendo*, That they proceed to take the Aſſiſe, notwithſtanding the allegation made of the King's Grant.

And there are divers Writs in the Regiſter directed unto D
Juſtices of Aſſiſe, that they do not proceed in the Aſſiſe againſt the Defendant *dummodo ſit in ſervitio Domini Regis* in the war, but to continue them; but theſe Writs are made by virtue of an Act of Parliament made for that time as it ſeemeth. But if the King certifie by his Writ unto the Juſtices, That the lands are in his cuſtody, by reaſon of non-age of any heir, or by an Inquiſition taken and returned in the Chancery: commanding that they do not proceed, the King not conſulted with; then it ſeemeth the Juſtices ought to ſtay for the time, although there is not any Office found nor returned; for they are bound to give credit to the King's certificate, although that it be not true *&c.* And

In

In attaint for the Plaintiff if he be in war in the Kings ſervice, he may have a Writ directed to the Judges of the Common Pleas, to continue the Attaint, and to adjourn it to a certain day, *&c.*

E And in Aſſiſe of *Novel diſſ.* if the King ſend his Writ to the Juſtices reciting that the Defendant holdeth the land of the King by gift by his Charter for life, commanding them that they do not proceed, the King not conſulted: Now although the Tenant will not plead the ſame, it ſeemeth, that by that writ the Juſtices ought to ſtay their proceeding. So if the King recite in the writ, the Tenant is in his ſervice in war beyond the Seas, or in *Scotland*, and that he holdeth for life by the King's Charter of the King's gift, commanding them not to proceed, the King not conſulted, but to continue the Aſſiſe until a certain day, there, it ſeemeth, they ſhall ſtay their proceedings; for the Tenant cannot plead it, *&c.* For if the Eſcheator will ſay, That he hath ſeiſed the Lands into the Kings hands in an Aſſiſe brought by any perſon, in that caſe the Court ſhall ſurceaſe, a *fortiori*, by the King's Certificate: and divers ſuch writs are in the Regiſter, *&c.*

F In Aſſiſe of Lands and Tenements, the Defendant pleads two or three records in bar to divers parcels of the Land which are in the Treaſury, and the Plaintiff denieth thoſe Records, the Defendant ought for to remove thoſe Records out of the Treaſury by a *Certiorari* directed unto the Treaſurer and Chamberlains of the Exchequer. And if he ſue forth ſuch a *Certiorari* to the Treaſurer, and Chamberlains, and they certifie ſome of the Records in the Chancery to the King, and moreover certifie, That there are other Rolls of the ſame Juſtices, of which they have not yet made full ſearch. Upon that Certificate made by the Treaſurer and Chamberlains in the Chancery, the King ſhall ſend his Writ unto the Juſtices, commanding them to continue that Aſſiſe until the next Aſſiſes, that full ſearch may be made of thoſe Records, ſo that the Tenant loſe not his Lands for faileur of the Records: and ſuch writ is in the Regiſter.

G And if a man ſue an Aſſiſe before the Juſtices of Aſſiſe, and the Tenant plead Baſtardy in the Plaintiff, upon which writ is awarded to the Biſhop to certifie at the next Aſſiſes; and before the next Aſſiſes the King maketh new Juſtices, and the ancient Juſtices do certifie the Record of Aſſiſe unto the Treaſury, the Plaintiff ought for to ſue a *Certiorari* to remove the Record out of the Treaſu-

ry

ry into the Chancery by a writ to the Treaſurer and Chamberlain, and upon that Record ſent unto the Chancery, he ſhall have a writ of *Mittimus* ſent unto the Juſtices reciting the matter; and in the end of the Writ ſhall be this clauſe:

[155] *Nos ut partibus prædictis in eadem aſſ. fieri valeat quod juſtum eſt, record. & proceſſ. prad. placiti, qua coram nobis in Cancellaria noſtra certis de cauſis venire fac. vobis mittimus ſub pede ſigilli noſtri mandantes, ut bis inſpectis, necnon certif. prad. Epiſcopi coram vobis ſuper hoc, ut dicit miſſa, ac recept. à Vic. Com. prædicti brevi originali ejuſdem, quod pentes ipſum remanèt, ſicut per inſpection. eorund. record. & proceſſ. nobis conſtat iterum in eadem aſſ. juxta tenorem brevis & placiti prædicti procedat. & eidem partibus fieri fac. quòd de jure & ſecundum legem & conſuetudinem regni fuerit faciendum. Mandamus enim eidem Vic. quod dictum breve vobis liberet ad proximam Seſſion. veſtram in Com. prædict', Teſte, &c.*

And if a man ſue an Aſſiſe before Juſtices againſt one Tenant, and in the ſame Aſſiſe he name the Mayor and Commonalty of any Town as Diſſeiſors, or Bailiffs of any Liberty as Diſſeiſor, unto the end they may not have Conuſance of the plea; or that they ſhall not make the panel; Now he may ſue a ſpecial Writ in the nature of an *Audita querela* directed unto the Juſtices of Aſſiſe to enquire of the matter, and to do Right unto the parties, and if it be found, it ſhall abate the Aſſiſe. *Ve.* Statute 9 *H.* 4. cap. 5. and ſee the like Statute made for the Sheriff. *Anno* 11 *H.* 6. *cap.* 2. A

But the Sheriff or Bailiff ought to ſhew the matter unto the Court, and pray that it be enquired of, *&c.*

Writ de quod ei deforceat.

THE Writ of *Quod ei deforceat*, lieth; where Tenant in Tail, or Tenant in Dower, or by the Courteſie, or for term of life loſe their Lands by default in a *Præcipe quod reddat* brought againſt them, Then they have not any other remedy if they were ſummoned according to the Law, *&c.* but this Writ of *Quod ei deforceat:* and this Writ is given by the Statute of *Weſtm.* 2. *cap.* 4. and the Writ is mentioned in the Statute and the form is ſuch: B

Rex Vic. &c. *Præcipe* A. *quod*, &c. *redd.* B. *qua fuit uxor* C. *unum meſuagium cum pertin. in* N. *quod clamat eſſe rationabilem dotem ſuam*, Vel ſic, *Quod clamat eſſe de rationabili dote ſua, & quod idem* A. *ei injuſte deforc. ut dicit.* C

And if the tenant in Frankmarriage bring the Writ, then the Writ is; D

Quod

Quod juſte, &c. reddat B. *unum meſſuagium cum pertin. quod clamat eſſe jus & maritagium ſuum, & quod idem* A. *ei injuſte deforceat.*

And if he be Tenant in Tail, then the writ is,

Quod redd. &c. quod clamat tenere ſibi & hæred. de corpore ſuo exeuntibus & pradict. A. *ei injuſte defore.*

And for Tenant for life the writ is,

Quod clamat tenere ad terminum vitæ ſuæ. Vel, for Tenant by Courteſie. *Quod clamat tenere per legem Angliæ.*

And the Regiſter is, That this writ for Tenant by the Courteſie, is by Equity of the Statute. But if the Tenant in Tail, or ſuch other Tenant who hath a particular eſtate, loſe by default where he is not ſummoned, &c. Then he may have a writ of Diſceit, or a *Quod ei deforceat*, as he pleaſeth.

E If a man loſe by default in an action of waſt. ſued forth againſt him, he ſhall not have *Quod ei deforceat*, for the verdict which found the waſt. 2 H. 4. 2.

And if a man loſe any Land by default in a Writ of Right in a Court Baron, he may remove that Record into the Common Pleas, and have a *Quod ei deforceat* upon that Record; and ſo he ſhall have the *Quod ei deforceat*, although F he do not remove the Record; but then it ſeemeth, That the *Quod ei deforceat* ſhall be ſued in the Common Pleas, or in the Court Baron, where he loſeth the Land, as he pleaſeth, *tamen Quare.* *Hamſord. contr.* 41 E. 3. 8. *vr.* 44 E. 3. 42. 2 E. 4. 11. 10 E. 4. 2. 10 H. 7. *ac.*

And the *Quod ei deforceat* lieth againſt a ſtranger to the Recovery; as if a man recover by default, and maketh a Feoffment, The *Quod ei deforceat* ſhall be brought againſt the Feoffee.

And if a woman loſe by default, and taketh Husband, ſhe and her Husband ſhall have the *Quod ei deforceat*; But if Tenant in Tail loſeth by default and dieth his heir ſhall not have the *Quod ei deforceat*, but a *Formedon*; for that is his writ of Right.

G Where a woman hath Dower aſſigned her in the Chancery for the non-age of the heir, who is in Ward to the King; and afterwards the heir at full age ſueth a *ſcire facias* in the Chancery againſt the Wife to avoid that endowment, and recovereth in that *Scire facias* by default of the Wife. Now the Wife ſhall have a *Quod ei deforceat* in the Common Pleas upon that Recovery.

And ſo if a man recover in the King's Bench any Land by default, upon a *Scire facias* ſued out of any Record which is there, the Tenant who loſt by default, ſhall have his *Quod ei deforceat*, and ſhall ſue the ſame in the Common Pleas,

If

46 E. 3. 21. If two Coparceners Tenants in Tail loſe their Lands by default, they ſhall joyn in a *Quod ei deforceat*, and yet the default of the one is not the default of the other. *M.* 46 E. 3.

And in a *Præcipe quod reddat*, if the Tenant for life or in tail appear, and after depart in deſpite of the Court, he ſhall loſe his Land, and yet he ſhall have a *Quod ei deforceat*, for that recovery is by his default, becauſe he did not appear when he was demanded.

And if Tenant in tail, or Tenant for life after the miſe joyned in a writ of Right depart in Deſpite of the Court, he loſeth his Land, and there he ſhall not have a *Quod ei deforceat*, becauſe Judgment final ſhall be given againſt him in that caſe.

Old N. B. 155. *cont.* 10 E. 4. 2. *cont.* If the husband and wife be ſeiſed of Land in the Right of the wife, for the life of the wife, and they loſe the Land in a *Præcipe quod reddat* by default, yet they ſhall have a *Quod ei deforceat*, &c.

And if Tenant for life loſeth his Land in a *Ceſſavit* brought againſt him by default, yet he ſhall have *Quod ei deforceat* by the Statute of *Weſt.* 2. *A.* 5 E. 3. *& M.* 6. E. 3.

And if Tenant by Receipt upon the default of Tenant for life appeareth, and is received, and pleadeth, and afterwards loſeth by Action tried; yet the Tenant for life ſhall have a *Quod ei deforceat*, for the Judgment is given againſt him by his default.

And if the Tenant vouch, and the vouchee will not appear, for which the Tenant loſeth by default of the vouchee, It is to ſee whether the Tenant ſhall have a *Quod ei deforceat*, for he loſeth the Land by the default, although it be not his own default, for the Statute is, *Et cum temporibus retroactis cum aliquis amiſiſſet terram ſuam per defaltam, non habeat aliud recuperare quam per breve de recto:* and there it doth not ſay, *per defaltam ſuam*, but onely by default. But after in the Statute, it ſaith, *Proviſum ſit, quod de cætero non ſit eorum defalta eis ita prejudicialis*, &c. And by that it ſeemeth that the Tenant ought to make default. But it ſeemeth that the default of the vouchee, is the default of the Tenant, and ſo default in both: *Quære* of that. But if the Tenant vouch, and the vouchee appeareth and entreth into the warranty, and afterwards loſeth by default, now if the Tenant loſe by the default of the vouchee, he ſhall not have a *Quod ei deforceat*, becauſe he ſhall have judgment to recover over in value againſt the vouchee, by the default of the vouchee, ſo as he ſhall have recompence. But if the vouchee doth not appear, but maketh default, then he ſhall loſe the Land by the default of the vouchee; but that is not the default of the Tenant, and therefore *Quære* of that caſe.

And

C And if husband and wife loſe by default, the Land of the wife which ſhe holdeth for term of life, if the husband dieth, ſhe ſhall not have a *Quod ei deforceat*, but a *Cui in vita*, for it is a demiſe made by the husband. And when he bringeth the *Quod ei deforceat*, he counteth that he was ſeiſed of the Land in his demeſn, as of free-hold, or in his demeſne in tail, without ſhewing of whoſe leaſe, or gift he was ſeiſed, and he ought to alledge Eſplees in himſelf, *&c.* and then the defendant ought to deny the right of the demandant, *&c.* and ſhews, how that another time he recorded the Land againſt the demandant, by *Formedon*, or other action, and ſhall ſay in the end of his plea, *Quod ipſe paratus eſt ad manutenendum jus & titulum ſuum prædict. per donum prædict. &c. unde petit judic. &c.* And then the demandant in the *Quod ei deforceat* ſhall traverſe that title, or may ſhew matter to bar that title, *&c.* but he ſhall not make defence, and then plead in bar, as he ſhall do in the *Formedon*, &c.

S. 48, E. 3. 8. acc. 2 E. 4. 11. ac.

The Tenant in the *Quod ei deforceat* may plead any bar as in other action, and then the Demandant cannot vouch by the Statute of *Weſt. 2. cap. 4.* But if he make his bar by the firſt recovery then he may. 33 H. 6. 46. *quod nota.*

Writ de Attornato faciendo vel recipiendo.

D THE writ *de Attornato faciendo* or *recipiendo* lieth, where a man ought to do ſuit at the County, or at the Hundred, or Wapentake, or other Court, and he would make Attorney for him to appear at the ſame Court, *&c.* And if he be in doubt whether the Sheriff will admit ſuch a man for his Attorney which he maketh; then he who would make ſuch Attorney, may ſue that writ directed unto the Sheriff, or Bailiff of the hundred, commanding them to receive ſuch a man to be Attorney, for him to appear, *&c.* and the writ is ſuch:

Rex Vic. &c. *Quia per commune conſil. regni noſtri proviſ. eſt quod quilibet liber homo, qui ſectam debet ad Com. Tithingum, Hundredum & Wapentagium, libere poſſit facere Attorn. ſuum ad ſect. ſuam pro eo faciend: Tibi præc. quod Attorn. quem S. loco ſuo 4tum. voluer. ad ſect. pro eo faciend. ad Com. tuum prad. Tithingam tuam de A. & B. Hundred. de C. & D. Wapentagium tuum de E. & F. loco ipſius S. ſine difficultat. ad hoc recipias, Teſte*, &c.

Otherwiſe unto a Bailiff of a hundred, thus:

Rex Ballivis ſuis de Hundredo 7. Hundred. de Cobham *&* Bray *ſalut. Quia per commun. conſil. regni noſtri,* &c. *qui ſectam debet ad Hundred. liber. poſſit,* &c. *vobis præcip. quod attorn.* &c. *ad prad. Hundred. 7. Hund. de* Cobham *&* Bray *loco ipſius S. &c.*

Otherwiſe unto the Bailiffs of another Lord.

Rex Ballis. A. de I. ſalut. Quia per Com. conſilium, &c. *qui ſectam debet ad Curiam dicti domini ſui libere poſſit,* &c. *vobis*

vobis præcipimus, &c. *ad Curiam dicti domini veſtri de* L. *loco ipſius* S. *ſine difficultat. ad hoc recipiat. Teſte*, &c.

And by that it appeareth, That the Tenant may make Attorney by his Letters Patents to do ſuit at the Court of his Lord. And if the Tenant by his Letters Patents under his ſeal make Attorney for him, to do ſuit for him at the Lord's Court, or at the Hundred, and the Bailiffs will not admit of him, *&c.* then he ſhall have a writ unto them in this form;

Rex Ballivis Decani & Capitul. Eccleſiæ beatæ Mariæ Linc. *de* C. *vel Hund. de* S. *ſalut. Quia*, &c. (uſque ibi) *præcipimus, quod attorn. quem* S. *per literas ſuas patentes loco ſuo attornar. voluerit ad ſectam pro eo faciend. ad Cur. diſtrum Decani & Capit. de* C. *vel ad Hundred. prad. Decani & Capitul. de* C. *loco ipſius* S. *ſine difficultate ad hoc recipiatis hac vice de gratia noſtra ſpec.* &c.

And for the Guardian there is another writ thus:

Rex, &c. *Vobis mandamus, quod attornat. quem* S. *cuſtu terræ & hared.* R. *loco ſuo attornar. voluerit ad ſectam pro eo, nomine dicti hared. faciend'*, &c. *loco ipſius cuſtodis ſine difficultate ad hoc*, &c.

Or thus to the Bailiffs of the King:

Rex Ballivis ſuis honoris Peverel *in Com.* N. ſalutem. *Quia*, &c. *vobis præcipimus, quod attorn. quem* S. *loco ſuo attorn.*
[157] *voluerit ad ſectam pro eo faciend. ad Curiam noſtram honoris prad. in Com prad. loco ipſius* S. *recipiatis*, &c.

And if the Lord of any Tenant be in ward to the King for the non-age of his heir, becauſe he holdeth other Lands of him in *Capite*, &c. and his other Lords will diſtrain for ſuit during the time the Lands are in the King's hand, or in the hands of his Committee, Then the King or his Committee ſhall have a ſpecial writ unto the Bailiffs of the other Lords, that they do not diſtrain the Committee, nor in the Lands, *&c.* during the time he is in the King's hands, or in the hands of his Committee, and if they have diſtrained them, that they deliver back the diſtreſs again; and that Writ appeareth in the Regiſter.

And if the King hath any Lands or Tenements in Ward, during the non-age of an Infant, and the King in Chancery aſſigns Dower unto the Wife of the Husband who was Father to the Ward of Lands holden of other Lordſhips; Now if the other Lords will diſtrain the Tenant in Dower, for ſuit at their Court during the time the lands are in the King's hands, the Wife ſhall have a writ unto the Bailiffs of the other Lords, commanding them that they do not diſtrain her. And recite in the writ all the ſpecial matter; and

if

if they have taken any diſtreſs, that they deliver it back again.

If a man make an Attorney to do ſuit for him at the County, or Hundred, or other Court, and the Bailiffs will not admit him for his Attorney, Or if the Bailiffs do admit him for Attorney, and afterwards diſcharge him after the year; ſuppoſing that he ought not to continue Attorney for the party above one year; Or for any other unreaſonable cauſe they diſcharge him to be Attorney for the party; Then the party may have a ſpecial writ directed unto the Bailiffs, *&c.* commanding them that they receive him for his Attorney, and thereupon he may have an *Alias*, and a *Pluries*, and an *Attachment* againſt them returnable in the Common Pleas, or in the King's Bench, if they will not admit him for his Attorney, or return cauſe upon the *Pluries*, which ſhall be allowable, whereforé they do not admit him; and the form of the Writ is ſuch:

Rex Ballivis A. de Hundredo de B. ſalutem. Ex parte C. nobis eſt oſtenſum, quod cum ipſe per breve noſtrum attornatum ſuum ad ſectam pro eo faciendo ad Hundredum prædict. domini veſtri de B. in eodem Hundredo coram vobis feciſſet, & idem attornatus per idem breve ad hoc admiſſus, ſectam illam hactenus fecerit ſicut moris eſt in regno noſtro, vos preſumptioni veſtræ voluntarie inuentes, & cauſam pretendentes, quod poteſtas hujuſmodi Attornati ultra An. durare non debet, ipſum C. prad. ſectam per Attorn. ſuum prad. facere non permittitis, in ipſius C. damnum non modicum & gravamen, de quo mitamur quam plurimum, & movemur. Et quia virtus brevium noſtrorum de hujuſmodi attornat. faciend. terminum non capit, nec terminus limitatur durantibus perſon. qua ad hoc requiruntur: Nos ne idem C. vel alii inſtabiné vexentur vel graventur occaſione prædicta, remedium ſuper hoc adhibere volentes: Vobis præcipimus, firmiter injungentes, quod ab hujuſmodi voluntariis & indebitis vexationibus & gravaminibus eidem C. vel aliis ea occaſione de cætero inferend. deſiſtentes, ipſum C. ſectam prad. per Attornatum ſuum prad. ſic difficultate qualibet facere permittatis, juxta tenorem prioris brevis noſtri vobis inde directi. Et ita vos habeatis in hac parte, quod prad. C. occaſione prad. non ponatur in deſalta, nec in aliquo ſit prædens, & quod non oporteat nos ſuper hoc amplius ſolicitari, per quod manum ad hoc aliter apponere debeamus, Teſte, &c.

Note, That the party may make Attorney by the King's Writ directed unto the Bailiffs, commanding them for to receive ſuch perſon for his Attorney. Or he may have a Writ out of the Chancery directed unto the Bailiffs, or Sheriff to receive any ſuch perſon for Attorney, that he

he will preſent unto the ſaid Bailiffs or Sheriffs to be his Attorney to do his ſuit; Or he may make Attorney by Letters Patents directed unto the Bailiffs without ſuing forth any ſuch Writ.

And if a man ſue forth a Writ directed unto the Bailiffs to admit one for Attorney to do his ſuit for him, and the Bailiffs refuſe for to admit him; Now the party who ſued forth the Writ ſhall have an *Attachment* againſt the Bailiffs for that refuſal, without ſuing forth an *Alias*, or a *Pluries* directed unto them.

And ſo the ſame Law is, If the Tenant by his Letters Patents maketh one his Attorney to do his ſuit for him, and the Sheriff or Bailiff of the Court doth refuſe to admit him for his Attorney: Upon that refuſal, the party ſhall have an Attachment againſt the Bailiffs, *&c.* although he hath not ſued forth any writ directed to him before, becauſe they do againſt the Statute, which requireth, That they admit him for Attorney whom the Tenant will make to be his Attorney.

And he ſhall have the like writ againſt the Bailiffs of any other Lord, who refuſe to admit an Attorney to do ſuit for the Tenant in any Court Baron, and that Writ appeareth in the Regiſter.

Writ pro Exoneratione Sectæ ad Curiam Com. vel Baron.

THis Writ lyeth where the Tenant holdeth his Land to do ſuit at the County Court, Hundred, or other Court Baron, or Wapentake or Leet, and he who ought to do the ſuit is in Ward unto the King. or his Committee, and the Lord of whom he holdeth by ſuch ſervice, will diſtrain him to do his ſuit at his Court during the time he is in Ward unto the King or his Committee; his Guardian ſhall ſue this Writ unto the Sheriff, or Bailiffs of the Court, that they do not diſtrain him, *&c.* to do the ſuit during the time he is in ward to the King or his Committee; and the form of the writ is ſuch:

Rex Ballivis A. de I. ſalutem. Cum ſecundum legem, &c. non debeamus ſectam ad Curiam alicujus facere occaſione terrarum & tenementorum quorumcunque in manu noſtra, vel in cuſtodia noſtra exiſtent. & illi quibus hujuſmodi cuſtodias commiſerimus cuſtodias illas, durante cuſtodia illa, adeo libere & ab omni ſecta quiete tenere debeant, ac ſi nos eas in manu noſtra teneremus: Vobis præcipimus, quod ratione terræ & tenementorum I. defuncti, qui de nobis tenuit in capite, & quæ ſunt in cuſtodia ejuſdem

ejuſdem R. *ex conceſſione noſtra non diſtringatis, vel diſtring. faciatis, ad faciendum ſectam ad Curiam prædict. domini veſtri de* I. *dur. cuſtodia antedicta, & diſtr. ſi quam, &c.*

And the like Writ ſhall be for Tenant in Dower, where ſhe is endowed in the Chancery of lands which are in ward to the King, which lands are holden of other Lords, now if the other Lords will diſtrain the Tenant in Dower, to doe ſuit for thoſe lands which ſhe holdeth in Dower, ſhe ſhall have a Writ for to diſcharge her, which is ſuch:

Rex Ballivis A. *de* B. *ſalutem. Cum ſecundum legem, &c.* (ut ſupra, uſque ibi) *exiſtentes, & mulieres terras vel tenementa tenentes in dotem de hujuſmodi cuſtodiis, ea adeo libere & ab omni ſecta quiet. tenere debeant dur. cuſtodiis illis, ac ſi prad. terras & tenementa in manu noſtra teneremus: Vobis præcipimus, quod* M. *&* R. *uxor ejus occaſione terrarum & tenementorum quæ fuer.* H. *in* F. *qua de nobis tenuit in capite, & quæ idem* K. *&* M. *tenent in dotem ipſius* R. *de dono prædict.* H. *quondam viri ſui, & de hæreditate filii & hæred.* A. *infra ætatem & in cuſtodia noſtra exiſtent. non diſtringatis ad faciend. ſectam ad Cur. prædict. domini veſtr. durante cuſtodia noſtra ſupradicta, & diſtr.* &c.

And if the heir be in Ward of the King and alſo his lands, and afterwards the Tenants Paravail who hold of the heir are diſtrained by other Lords, of whom the heir holds his lands, to doe ſuit unto the Lord's Court, thoſe Tenants ſhall have a Writ directed unto the Lord's Bailiff, to diſcharge them of the ſuit, and the Writ is ſuch:

Rex Vic. Nott. *ſalutem. Cum ſecundum legem & conſuetudinem regni noſtri, nullus qui tenet de hæred. infra ætatem & in cuſtodia noſtra exiſtent, teneatur ad ſectam faciendam ad Com. Hundred. Wapentag. ſeu alios Cur. pro terris & tenementis ipſorum hæred. in manu noſtra exiſtent, durant. cuſtod. ſupradict': Tibi præcipimus, quod Abbat. de* Derley *tenent. quorundam terrarum & tenementorum* Rogeri *filii & hæred.* Roger. Bellers *defuncti in* Chilwell. *qui de Domino* Rich. *nuper Reg.* Angliæ *tenuit in Capite, occaſione terrarum & tenementorum ejuſdem hæred. in eadem Vill. in manu noſtra ratione minoris ætat. ſuæ exiſtent. non diſtring. vel diſtring. facias, ad faciend. ſectam ad Wapentagium de* B. *durante cuſtodia ſupradicta.*

And if the heir and his lands be in the King's Ward, for lands holden of the King *in Capite*, and afterwards the other Lords of whom the heir holdeth parcel of his lands will diſtrain for any Service or Rent to them due, then the King or his Committee may ſue a Writ for them

to ſurceaſe from ſuch diſtreſs, and the Writ is ſuch:

Rex Ballivis, &c. Cum hared. infra ætatem & in cuſtodia noſtra exiſtentes ſervitia aliqua durantibus cuſtod. illis facere minime debeant ſeu teneantur ſecundum legem & conſuetudinem regni noſtri, Vobis præcipimus, quod diſtriction. quam Abbati de M. tenenti hared. Willielmi *de* W. *qui de nobis tenuit in Capite infra ætatem & in cuſtodia noſtra exiſtent. pro homag. fidelitat. ac aliis ſervitiis prædict. hared. præf. Dom. faciend. fac' ſuperſedeatis omnino durante cuſtodia antedicta, & diſtring. ſi quam, &c.*

And alſo the Tenant in Dower ſhall have ſuch Writ if the Bailiff of other Lords will diſtrain her, for the relief of the heir or other Services during the time that the heir's Lands are in the King's cuſtody, or in the cuſtody of his Committee. And it ſeemeth that he may ſue this Writ directed unto the Lord himſelf, as well as to the Bailiffs, or unto them both.

Note, that if a man holdeth of another to do ſuit to his Mill, *&c.* if he doe not the ſuit, he ſhall have a *Secta ad Molendinum* againſt him, and by the ſame reaſon, if a man hold of another Lord to doe ſuit at his Court in the Manor of *D.* if he doe not the ſuit, the Lord may have a Writ of *Secta ad Curiam ſuam faciend.* as well as the other Writ. But yet there is no ſuch Writ in the Regiſter, becauſe he may diſtrain for that ſuit, and ſhall not have any other profit but onely appearance in his Court. But in the other Caſe *de Secta ad molendinum*, he ſhall have other profits by the ſuit; the Toll of the Grain he ſhall grind there, and for that profit it ſeemeth the action of *Secta ad Molendinum* was given, and for the ſuit at the Court but onely a diſtreſs, *tamen Quære.*

Ve 31 H. 8. 25. 33 H. 6. 7. Stamf. 138. H.

If the King have Lands by Forfeiture or Eſcheat, and leaſeth them for life, at will, or in tail, and if the Lord of whom the Lands are holden will diſtrain the King's Committee or Leſſee for ſuit or other Services, he ſhall have a ſpecial Writ unto the Lord's Bailiffs to ſurceaſe, *&c.*

And if Lands deſcend unto divers Coparceners, for which one ſuit ſhall be done at the Lord's Court, if parcel of thoſe Lands come into the King's hands, then he ſhall have a ſpecial Writ to diſcharge him of the ſuit for the time they ſhall be in the King's hands, which ſhall be ſuch:

Rex Vic', &c. ſalutem. Cum de communi conſilio regni noſtri, proviſ. ſit, quod ſi hared. aliqua, de qua unica ſecta debeat. ad plur. hared. &c. vel ad alios per venditio. &c. devolu-

tur:

tur : unica tum, &c. *fieri conſuevit, ac quædam hæreditas, quæ fuit* H. *de* B. *de Baronia de* B. *de qua quidem Baronia ubica ſecta tantum ad Com. tuum prædict. debit. ad dilect. & fidel. noſtrum* W. *de* H. *& I. fil. & hæred.* R. *de* S. *infra ætat. & in cuſtod. dilect. & fidel. noſtri* R. *de* N. *ex commiſſione noſtra exiſten. per venditionem ſit devoluta, ut accepimus : Noſque ſecundum legem & conſ.* &c. *non debeamus ſectam aliquam facer. occaſione terr. & tenement. in manu. noſtra, & in cuſtod. noſtra exiſt. & illi quibus hujuſmodi cuſt. commiſerim. illas adeo libere & ab omni ſecta quiete teneri debeant, ſicut nos ea in manu noſtra teneremus : Tibi præc. quod ſi ita eſt, tunc non diſtr. prædict.* W. *de* H. *ad fac. ſect. ad com. tuum prædict. pro terr. & tenement. de Baronia prædict. dur. cuſtod. dicti hæredis ſupradict'*, &c.

And if the wife be Tenant in Dower of any land, ſhe ſhall not be diſtrained to doe ſuit for that land which ſhe holdeth in Dower, if the heir have ſufficient land in the ſame Countrey to be diſtrained for the ſame. And if ſhe be diſtrained, then ſhe ſhall have ſuch Writ :

B *Rex Balliv. hundred. de* N. *ſalutem*, &c. *Cum ſecundum legem & conſuetud. regni noſtri mulieres tenentes in dotem, pro terris & tenementis ſuis, quas tenent in dotem, ſect. ad hundr. vel cur. alicujus facere non debeant. Vobis præcipimus, quod* A. *quæ fuit uxor* B. *ad faciend. ſectam ad hundr. prædict. pro terris & tenementis q. tenet in dotem & libero tenemento quod fuit prædict. quond. viri ſui, contra legem & conſuetudinem regni noſtri non diſtringatis, dummod. hæred. prædict.* B. *alios terr. & tenementa in balliva tua habet, per quæ diſtringi valeat ad ſectam illam pro prædict. dote faciend. & diſtrict. ſi quam fecer.* &c. *eam ſine dilatione liberari facias*, &c.

C And if lands deſcend to many Coparceners, whereof one ſuit ought to be done for the whole land ; now if the land be holden of the King ; then all the Coparceners ought to doe the ſuit as well after partition as before : But if the land be holden of another Lord, then that Copartener or his Feoffee who hath the part of the eldeſt ſiſter ſhall onely doe the ſuit, and the Lord will diſtrain the other Coparceners, then they ſhall have a Writ againſt him directed to him or his Bailiffs to diſcharge them of that ſuit, and diſtreſs taken, &c. and the Writ ſhall be ſuch : Plowd. Com. 240. &c.

Rex C. *vel bail.* C. *ſalutem*, &c. *Cum de communi*, &c. *proviſum ſit, quod ſi hæreditas aliqua, de qua unica ſecta tant. debeat. ad plur. hæred. participes ejuſd. hæred. vel al' per vend. ſeu alio modo devolvatur, unica tant. fiat ſecta pro hæreditate illa, ſicut prius fieri conſuevit, ac quædam hæred. quæ fuit* A. *in* M. *pro qua unica ſect. tum debet ad cur. tuam de* I. *vel ad*

cur. prædict. domini vestri de I. *ad* A. B. *& C. cum hæred. & participes hæred. prædict. sit devoluta ut accepimus: Tibi vel vobis præcipimus, quod non distringas vel distringatis, prædict.* A. B. *& C. ad diversos sect. pro portionibus suis hæred. prad. separatim faciend. ad curiam tuam de* I. *vel ad cur. prad. domini vestri de* I. *contra form. provis. prædict. & districtionem si quam*, &c.

And if the Tenant enfeoff divers persons of lands for D which one ought to be done, if one of the Feoffees do the suit, *&c.* if the other Feoffees are distrained to do suit for that land, they shall have such Writ, which Writ is in the Register, and that Writ is given by the Statute of *Marlebridge*, cap. 9.

And so if the heirs or Feoffees shall doe the suit at the County, Hundred, or Wapentake, if one doe the suit, all of them are discharged, and if they be distrained, they shall have that Writ.

And so if one Coparcener maketh a Feoffment of his part, or a man be Tenant by the Curtesie of one part of the land, yet one suit shall be onely done by one Coparcener by him who hath the eldest part. And if they be joynt Feoffees, then by one of them, as they can agree amongst themselves, *&c.* And if he sue such Writ, and he be distrained, then he shall have an Attachment against the Lord, or the Bailiffs to whom the first Writ was directed, to answer that contempt, in which Writ he shall recover his damages, *&c.*

But if there be two Coparceners of land, for which one E suit ought to be done, and the eldest sister will not doe the suit at the Lord's Court, then the Lord may distrain the other Coparcener as well as the eldest Coparcener for that suit, and if the Coparceners be distrained, then they shall have a Writ against the eldest sister to compell her to doe the suit, and the Writ shall be such:

Rex Vic', &c. *Si* B. *& C. fecerit*, &c. *tunc sum.* &c. A. *qd. sit*, &c. *ostens. quare cum de communi*, &c. *quod si hæred. aliqua*, &c. (usque ibi) *consuevit, & quod illa quæ habet entiam partem*, &c. *ac quadam hæred.* &c. (usque ibi) *sit devoluta, ut accepimus, & prædict.* A. *habet partem hæred. illius. Et præfat.* B. *& C. parat. sunt contribuer. pro portionibus suis ad sectam illam faciend. Idem* A. *sectam illam pro se & præfat.* B. *& C. cur. prad. facere contradicit. ad grave dammum ipsarum* B. *& C. & contra form. provisi. præd. ut dic. & habeas ibi sum.* &c.

And

A And if a man have lands in divers places in the County, and hath ſeveral Leets, &c. or Hundreds, and he is conſtrained to come unto the Leet or the Sheriffs Torn, where he is not dwelling or converſant, but is dwelling within the precinct of any other Leet or Hundred, &c. Then he ſhall have a Writ unto the Sheriff, for diſcharging him from coming to the Sheriffs Torn, or Hundred or Leet, or other place, than in the Leet or Precinct of the Hundred where he dwelleth; and the Writ is ſuch;

Rex Vic. Wigorn. *ſalutem. Cum de communi conſilio regni noſtri proviſ. ſit quod ſi qui in diverſis hundred. habeant tenementa, non habeant neceſſe venire ad turnum vic. niſi in hall. ubi fuerint converſantes: Tibi præcipimus, quod non diſtring. S. ad veniend. ad turnum tuum in hundredo noſtro de I. contra form. proviſ. pradict.* &c.

And look the Statute of *Marlebridge*, cap. 10. By which it appeareth, that the Sheriff ought for to hold his Torn as he hath uſed in the time of *Rich.* the firſt, and *John*, Kings of *England*.

And by the Writs it ſeemeth, that he ſhall hold his Torns in every Hundred, &c. And if the Sheriff diſtrain againſt that Statute any man, then he may ſue that Writ upon the Statute, &c. and if he do diſtrain him after, then he ſhall have Attachment againſt the Sheriff, &c. And the Writ is ſuch:

Rex Coronatoribus ſuis in com. Lincoln. *ſalut. Si* A. *fecerit*, &c. *tunc ponite*, &c. B. *Vic. noſtrum com. prad. quod ſit*, &c. *oſtenſ. quare cum de communi conſilio*, &c. (uſque ibi,) *converſant, idem* B. *vel idem Vic. diſtrinxit præf.* A. *ad veniend. ad turn. ipſius Vic. de hundred. noſtro de* I. *contra form. proviſ. pradict. & contra form. mandati noſtri prius ei inde direct. ut dic. & habeatis*, &c. *Et averia ipſius* A. *ea occaſione. capta interim deliberari faciatis. Teſte*, &c.

B And if a man have lands within the Precinct of ſeveral Leets, or in one County, and he dwelleth within the Precinct of one of them, and he is diſtrained to come unto another Leet where he dwelleth not, then he ſhall have ſuch Writ unto the Sheriff, or Bailiffs of the Court, &c. that they do not diſtrain him to come to that Leet, within the Precinct whereof he dwelleth not, and the Writ is ſuch:

Rex, ball. ſuis honoris de C. *in com.* Lincoln. *vel, ball.* A. *de* B. *in com.* &c. *ſalut. Cum de communi conſilio*, &c. *ſi qui in diverſ. hundred.* &c. *non habeant neceſſe venire ad viſum franc. plegii, niſi in hall. ubi fuer. converſant': Vobis prac. quod non*

distringat. ad veniend. ad visum franciplegii in cur. vestra, vel in cur' domini vri. honor. predict. in com' predict. cont. form. &c. *& districtionem. si quam,* &c.

And it appeareth that if the party be distrained, after that he hath sued the Writ directed unto the Sheriff, or Bailiffs, that they do not distrain him: That he shall have an Attachment against them, But it seems reasonable, that first he have an Attachment against the Sheriff, or against the Bailiffs, who distrained him to come to the Leet in the Hundred where he is not dwelling, if he be dwelling within the Precinct of another Leet, because the Statute of *Marlebridge* is a prohibition in it self, and he who doth contrary to the Statute doth wrong unto the party, upon which he may have an Attachment, without suing forth any Writ.

Note, that men or women who have entred into Religion, ought not to come unto the Sheriffs Torn, or unto the Leet of any other without great cause; and if they be distrained for to come, they may have a Writ out of the Chancery to discharge them, which shall be such: C

Rex Vic', &c. *Cum de communi consilio,* &c. *quod viri religiosi non habeant necesse venire ad turnum vic',* &c. Vel sic: *ad visum franciplegii, nisi eorum presentia ob aliquam causam specialiter exigatur: Tibi precipimus, quod non distring. Abbat. de* I. *ad veniend. ad turnum tunm:* Vel sic: *ad visum franciplegii, in hundred. vestro de* F. *contra form. provisionis predict, & districtionem,* &c.

And the Abbat shall have such a Writ unto the Bailiffs of another Lord, that they do not distrain him to come to his Leet.

And by the Common Law, Parsons of Churches shall not be compelled or distrained to come to the King's Leets, or to the Leets of other Lords of the lands annexed to their Churches, and if they be distrained so to doe, they shall have such Writ:

Rex Vic', &c. *Cum secundum consuetudinem regni nostri personæ Ecclesiast. ratione terr. & tenementor. suor. Eccles. sint annex, venire non debeant ad visum franciplcg. in cur. nostra, vel aliorum quorumcunque: Tibi precip. quod C. personam Eccles. de* I. *ratione terr. & tenement. suotum Eccles. prad. annexarum, ad veniend. ad visum franci pleg. in hundred. de* N. *non distringas contra consuet. prad. & districtionem,* &c.

And Clarks who are not Parsons, nor have Benefices, shall not be distrained or compelled to come to Torns or Leets, but they shall have a Writ to discharge them, thus:

Rex

Rex Vic', &c. Cum perſona Eccleſiaſt. non habeant neceſſe venir. ad turn. vic. vel ad viſum franc. pleg. niſi eorum præſent. ob aliquam cauſam ſpecialiter exigatur juxta form. proviſionis de communi conſilio regni noſtri in conſimili caſu pro viris religioſ. facta, ideo tibi præcipim. quod non diſtring. S. perſonam Eccleſ. de N. vel capellanum, ad veniend. ad turn. tuum vel ad viſum franc. pleg. noſtri in hund. de I. cont. form. proviſ. prad. & diſtrict', &c.

And women are not compellable nor diſtrainable to come unto the Sheriffs Torns, nor to Leets, and if they be diſtrained they may ſue ſuch a Writ as a Prieſt may ſue, and thereupon an *Alias*, a *Pluries*, and Attachment, *&c.* And becauſe that women are not ſworn in Leets as men who are of the age of twelve years or more are; It is ſaid, That when a woman is outlawed; that ſhe is *Wayve*, and not Outlawed; for ſhe was never ſworn to the Law, *&c.* But a man is ſaid outlawed, becauſe he was ſworn to the Law; and now for his Contumacy he is put from the Law, and ſaid outlawed, as it were *Extra legem poſitus*; and a woman is not ſo, for ſhe was never ſworn to the Law.

B And by the Rule of the Regiſter, two women may ſue that Writ unto the Sheriffs or Bailiffs of the Leet, that they do not diſtrain them to come to the Torn or Leet, *&c.*

C And if the Sheriff will diſtrain the Tenants in ancient demeſn to come unto the Leet or Sheriffs Torn, they may have one Writ for them all directed unto the Sheriff, commanding him that he do not diſtrain them, *&c.* to doe any ſuit at the Leet or Torn; and that Writ ſhall be ſued in all their names if they will, as a *Monſtraverunt* ſhall be ſued: Or any of them may ſue the Writ in his own name if he be diſtrained to do ſuch ſuit; and the Writ is ſuch: See before 14 good Caſes for their Privileges.

Rex Vic', &c. Monſtraverunt nobis homines de manerio de D. *quod. & de antiquo Dominico Coronæ* Angli. *quod cum ipſi ad Torn. Vic. ſeu ad viſum franc. pleg. extra libertatem maner. prd. venire non debeant niſi ipſe vel eorum anteceſſor homines & tenentes de eodem manerio venir. conſueverunt à temporibus retroactis, tu nihilominus homines noſtros prad. ad veniend. ad Torn. in* K. *vel ad viſum franc. pleg. in hundr. noſtro de* K. *cont. conſuet. in eodem manerio hactenus uſitatam gravit. diſtringis & ipſos multiplicit. ea occaſione inquietas minus juſtè in ipſorum hominum & tenentium præjudicium manifeſtum & gravamen. Et quia prad. hominibus & tenentibus nolumus injuriari. Tibi præcipimus, quod ſi ita eſt, tunc ab hujuſm. diſtrictionibus eis ex cauſa prædict. de cætero inferend. penit. deſiſtas, & ipſos conſuetudinibus ſuis, quibus hactenus rationabilit. uſi ſunt abſque*

impedimento seu calumnia uti permittas & gauder. ne querela ad nos veniat iterata. Teste, &c.

And if the Sheriff will distrain a man to doe suit to the Hundred or Wapentake twice in the year to doe things appertaining to that Leet. Then he shall have a Writ upon the Statute of *Magna Charta* directed to the Sheriff, which shall be thus: D

Rex Ball. suis de Wapentak. de R. *sal. Cum in Magna Charta de libertatibus* Angl. *contineat. quod nullus Vic. vel Ball. suus fac. turn. suum. per hund. nisi bis in anno & non nisi in loco debito & consueto, viz. semel post Pasch. & iterum post festum* S. Michael. *ac jam ex querel hominum & tenentium Abbat. de* C. *accepimus, quod vos ipsos homines & tenent. in hac part. pergravar. machinantes, ipsos ad veniend. ad quodlibet Wapentag. nostrum prad. ad præsentand. ibidem, ea q. ad visum franc. pleg. pertinet jam de novo gravit. distringetis, in ipsorum hominum & tenentium grave damnum & præjudicium manifestum, & contra tenorem Magn. Chart. prad. nos eand. chart. in omnibus inviolabiliter observare volent. vobis præcipimus, quod dictos homines & tenentes ad veniend. coram vobis ad Wapentagium prad. ad præsentand. ea q. ad visum franc. pleg. pertineat contra tenorem Chartæ prad. nullatenus distring. & districtionem, si quam,* &c.

And by that it appeareth, That he shall not distrain to come to the Hundred to present a thing appertaining to the Leet but twice in the year; But to doe suit at the Hundred, to doe that which appertaineth to the Hundred Court, he may distrain them several times to doe the suit, and they shall have no remedy, because Suit at the Hundred is from three weeks to three weeks.

Writ de Quarentina habenda.

THE Writ of *Quarentina habenda* lieth, where a man dieth seised of any Mesuage and Lands, *&c.* and immediately after the death of the Husband, the heir or he who ought to have the Lands after his death will put the wife out of the Mesuage, *&c.* Then the wife shall have this Writ; for by the Statute of *Magna Charta*, cap. 7. the wife shall remain in the Capital Mesuage after the death of her Husband by forty days, if it be not a Castle; And that writ is *Vicontiel*, and shall be directed unto the Sheriff, and he shall hold Plea thereof, and the Writ is such: E

Rex Vic', &c. *vel ballivis suis* S. *salutem. Ex querel.* B. *quæ fuit uxor* D. *accepimus, quod cum in Magna Charta de libertatibus* Angl. *contineatur, quod vidua maneant in capitali Mesuag.*

ſuag. maritorum ſuorum per quadragint. dies poſt obitum maritorum ſuorum præd. niſi meſuagia illa caſtra ſunt; infra quod tempus dotes ſua aſſignentur eiſdem. & quod interim habeant rationabilia eſtoverta de bonis eorund. I. *de C. ipſum* B. *ſtatim poſt mortem prædict. viri ſui de Capitali meſu. quod fuit ejuſdem* D. *in* H. *licet caſtrum non ſit, nec dos ei aſſign. fuer. violenter ejecit & ipſam eſtoverium ſuum de bonis eorund. com. percipere non permitti', in ipſius* B. *damnum non modic. & gravamen, & cont. tenor. Chartæ prædict. Et quia præf.* B. *injuriari nolumus in hac parte, vobis mandamus, quod vocatis coram vobis partib. præd. & auditis hinc inde eorum rationibus, eidem* B. *plenam & celerem juſtitiam inde fieri faciatis juxta tenorem Chart. præd. ne pro defectu juſtitiæ querela ad nos venerit iterata, Teſte,* &c.

Quare, if an Infant may keep the poſſeſſion during the time of *Quarentine* by force of the Statute of 8 H. 6. 4. & 5 Ma. Dyer 161.

A And upon that Writ the Sheriff ſhall award proceſs againſt the party to come, and anſwer the ſame; and ſhall not ſtay until the County Court be holden; for this Writ is a Commiſſion unto him, and upon the ſame he ſhall immediately make proceſs againſt the party for to anſwer, *&c.* within two or three daies according to his diſcretion, and thereupon to proceed as Juſtices ſhall do upon a Commiſſion of *Oyer* and *Terminer*, &c.

Nota by *Nemeton.* The woman ſhall not have meat and drink, For the Statute doth not extend to it. But *Fitzherbert* in Abridging the Caſe *Quarel*, if ſhe may not kill things for her proviſion, if there be not any proviſion in the houſe.

Writ of Contribution.

B THE Writ of Contribution lieth where there are Tenants in Common, or who joyntly hold a Mill *pro indiviſo*, and take the profits equally, and the Mill falleth into decay, and one of them will not repair the Mill; Now the other ſhall have a writ to compell him for to be contributary to the Reparations, and the writ is ſuch.

Rex Vic', &c. *Si* A. *fecerit*, &c. *tunc ſumm'*, &c. B. *& C. quod ſint apud* W. *&c. oſtenſ. quare cum iidem* A. B. *& C. quoddam molendinum in* N. *pro indiviſo teneantur, & ipſi exitus inde provenient. pro equali portione percipiant, & ad reparationem & ſuſtentac. ejuſdem molendini teneantur, ac iidem* B. *& C. licet proportionem de exit. illis ipſos contingen. percipiant, reparationi & ſuſtentationi prædict. molendini contribuere contradicunt, in ipſius* A. *damnum non modicum, & gravam. ut dicit, & habeas ibi ſum. & hoc breve.*

And if there be three or four Coparcenors of Lands, and the eldeſt Sifter do the ſuit to the Lord of whom the Lands are

are holden for all the Coparcenors. and the others will not allow her for her charges and losses according to the rate from the same suit; That Coparcenor who did the suit may have this Writ of Contribution; and the writ is such:

Rex Vic', &c. *Si* B. *fecerit*, &c. *tunc summ.* A. *&* I. *uxorem ejus, &* B. *&* F. *uxorem ejus quod sint coram Justic.* &c. *ostens. quare cum de com. consilio*, &c. *quod si hæreditas aliqua*, &c. (ut supra usque ibi,) *&* ille *qui habet enitiam partem hæreditatis illius, sectam illam faciat pro se & participibus suis ejusdem hæreditatis & quod iidem participes contribuant ad sect. illam faciend. ac quedam hæred. quæ fuit* C. *in* R. *qua unica secta ad hundred.* I. *de* N. *tantum debetur, ad ipsum* B. *& prad.* A.I.R. *&* F. *particip. hæreditatis prædict. sit devoluta, ut accipimus, & prædict.* B. *qui habet enitiam partem hæreditatis illius, sectam illam fac. ad hund. prad. vel ad cur. prad.* A.I.R. *&* F. *partic. suis iidem* A. I. R. *&* F. *ad sectam illam faciend. contribuer. contradicunt, ad grave damnum ipsius* B. *& cont. formam provisionis prad. ut dicit, & habeas*, &c.

And if there be many Coparcenors and the eldest do the suit, and the other Coparcenors agree with the eldest for a Rate; now the Writ of Contribution shall be brought against the others, who would not contribute, *&c.* And if many be infeoffed of land, for which one suit ought to be done, *&c.* Now if they agree among themselves, that one of them shall do the suit, and that the others shall contribute unto him, if he do the suit, and afterwards the others will not allow him for that suit according to their rate, Then he shall have the writ of Contribution against them, and the Writ shall mention the agreement, *&c.* and if they cannot agree, then the Lord shall distrain them all for all their suits, if the suit be not done; But if one Feoffee of his own will do the suit for them all, without any agreement for the same made between them, The Lord cannot then distrain the others for the suit; for as to the Lord it is not material whether there be any agreement between them or not; but between the Feoffees he that did the suit shall not have the Writ of Contribution against his Companions, with agreement thereof made betwixt them. But if one joynt Tenant do make a Feoffment in Fee of his part, his Feoffee shall do a several suit by himself. But the other Joyntenants shall do but one suit by the Statute of *Marlebridge*, cap. 9. But every Tenant in Common shall do several services and several suits. And the process in this writ is Summons, Attachment and Distress.

Writ

Writ de Contra formam Feoffamenti.

E THE Writ *de Contra formam Feoffamenti* lieth, where a man doth Enfeoff another before the Statute of *Quia emptores terrarum*, to hold of him by Homage, Fealty, and Rent by deed, and afterwards he will diſtrain for ſuit or other ſervices to be done unto him; He who was enfeoffed, or his heir, ſhall have this writ of *Contra formam Feoffamenti*, &c. 1. 5 E. 4. 85 Br. cont. formam Feoffamenti.

F And this writ may be directed unto the Lord himſelf, or unto his Bailiffs, commanding them that they do not ſtrain him againſt the form of his grant; and this writ is a prohi-
A bition in it ſelf. And if the Lord and Bailiffs do contrary to the writs ſent to them, The Tenant thereupon ſhall have an Attachment, and a Diſtreſs; and the form of the writ is ſuch:

B *Rex* I. *vel ballivis* I. *ſalutem, Cum de Communi*, &c. *proviſum ſit, ne qui occaſione tenementor. ſuor. diſtringantur ad ſectam faciendam ad curiam dominorum ſuorum, niſi per formam feoffamenti ſui ad ſectam illam ſpecialit. tenent. aut ipſi vel eorum anteceſſores tenement. illa tenent. eam facere conſuever. ante prim. tranſfretation. Domini* Hen. *Regis in* Brittan. *Tibi vel vobis præcipimus, quod non diſtringas vel diſtringatis* A. *ad faciend. ſectam ad Curiam tuam de* I. *vel ad Curiam prædict. Domini veſtr. de* N. *contra formam proviſion. prad. & diſtrictionem.* &c.

And no perſon ſhall have this Writ of *Contra formam Feoffamenti*, but he who was enfeoffed, or his heirs who are privies to the deed; But if the Feoffee to whom the Lands were given to hold of the Feoffor, and his heirs by the deed make a feoffment over to hold of the cheif Lord, *&c.* The Feoffee ſhall not have this writ *de contra formam Feoffamenti*, becauſe he is not party or privy to the deed, but he ſhall rebut the Lord by that deed, to claim other ſervices than are mencioned in the deed. And that writ is a prohibition unto the Lord and his Bailiffs; and if he diſtrain after the writ delivered to him, the Tenant ſhall have an Attachment againſt him, and thereupon he ſhall recover his damages if it be found for him, *&c.* and the parties Prohibition, Attachment and Diſtreſs.

And the Rule in the Regiſter is: *If any for ſuits undue againſt the form of any Statute, to the Court of any to be done be diſtrained, he may have a Prohibition againſt the diſtrainer, and after an Attachment if need be:* And afterwards Attachment,

ment, nor can be Attached, unleſs a Prohibition be firſt directed unto him.

And the opinion of *Parning* is *P.* 10. *E.* 3. That if a man give land in Frankmarriage, or in Frankalmoign, that the donor ſhall not have a writ of *Contra formam Feoffamenti*; nor his heirs, becauſe there are not any ſervices expreſſed in the deed, for which reaſon he is out of the Statute of *Marlebridge*. cap. 9. but they may rebut the Lord by ſuch deed.

And if the Lord confirm the eſtate of the Tenant to hold by leſſer ſervices, *&c.* the Tenant ſhall have a writ of *Contra formam Feoffamenti*; if he be diſtrained for more ſervices than there are ſpecified in the deed of Confirmation. *M.* 16 *E.* 3. *Avowry* 243.

And in a *Contra formam Feoffamenti*, the perſon did count H upon the deed, and the Diſtrainer demanded over thereof, and could not have it. *M.* 3. *E.* 2. *Accon ſur le Caſe* 5.

And the *Contra formam Feoffamenti* lieth onely againſt the Feoffer and his Heirs.

Writ de Coronatore eligendo vel exonerando.

4 E. 4. 44. THE Writ *de Coronatore eligendo* lieth, where a man who is I Coroner of any County dieth, or be diſcharged of his Office, then that writ ſhall be awarded unto the Sheriff, that he in full County by the Freeholders of the County chooſe another in his place, and to certifie the Election, and his name who is choſen in the Chancery.

And in Every County commonly there are four Coroners, L and in ſome Counties ſix Coroners, and in ſome Counties leſs as the uſage is; and if any of them dieth, or is diſcharged, then ſhall iſſue ſuch writ:

Rex Vic, &c, *Quia* L. *nuper unus Coronatorum noſtrorum in* N *com tuo diem clauſit extremum, ut accepimus: Tibi præcipimus, quod ſi ita eſt, tunc in pleno com. tuo de aſſenſu ejuſdem com. loco ipſius* L. *eligi fac. unum alium Coronatorem juxta formam ſtatuti inde edit. & proviſi, qui præſtito ſacrament. prout moris eſt, extunc ea fab. & conſervet, quæ ad officii Coronatoris pertinent in com. prædict. & talem eum eligi fac. quo melius ſciat & poſſit officio illi intendere, & nomen ejus nobis ſcire fac. Teſte*, &c. And now it appeareth by the writ, that upon Election made, the Sheriff ſhall give him his oath duly to execute his office, *Ve. Stat. Weſt.* 1. *cap.* 10.

And the Coroner ſhall be diſcharged of his Office by the N King's writ ſent unto him, and thereupon ſhall iſſue another writ

writ directed unto the Sheriff to chooſe a new Coroner, and that writ ſhall recite the cauſe of the diſcharge of the other Coroner; and the writ ſhall be ſuch:

Rex Vic', &c. *Quia R. unus Coronatorum noſtrorum com. tui diverſ. negotiis noſtris in com. tuo faciend. ita occupat. eſt quod ea quæ ad officia Coronatoris in eodem com. pertinent exercend. vacare non poteſt, ut pro certo intelleximus, ipſum ab officio illo amovimus: Tibi præcipimus, quod unum alium Coronatorum* &c. ut ſupra vel ſic: *Quia ex teſtimonio accepimus fide digno, W. T. unus Coronatorum noſtrorum com. tui adeo languidus eſt, & ſenio confectus, quod ad ea,* &c. *exercend. non ſufficit, ipſum W. duximus ab officio illo removend. Et ideo tibi præcipimus,* &c. Vel ſic: *Quia W. unus Coronat.* &c. *minus idon. eſt ad offic. illud exequend. ſicut ex relat,* &c. Vel ſic: *Quia accepimus, quod W. in coronat. com. prædict. nuper elect. terr. vel tenementa in eodem Com. non habet, in quibus juxta ſtatum ſuum morari poſſit pro prædict. offic. exercend. Tibi præc.* &c, Vel ſic: *Quia A. unus coronat.* &c. *morbo paralyſis percuſſ.* &c. Vel, *quia ex extremis partibus totius com. morat. per quod ea quæ ad offic.* &c. *commode exercer. non poteſt.* Vel, *Quia in officium vic. com. prædict. eſt electus,* Vel, *in viridar. foreſtæ noſtr. de S. electus extitit per quod,* &c. Vel, *Quia non habet centum ſol. terræ, ut dic.* Vel, *Quia non eſt miles,* &c.

L. 5 E. 4. Ac by our Judg. Coroner ſhall not be diſcharged by deceſſe of the King, becauſe he is made by Writ conte. of others, who are by commiſſion. 4 E. 4. 44.

But it ſeemeth that at this day this laſt cauſe is not cauſe for to remove the Coroner: for if he have ſufficient Lands within the County, it ſufficeth, although he be not a Knight, notwithſtanding the Statute which requireth that he be a Knight. For thoſe words are put into the Statute, to the intent that he ſhould have ſufficient within the County, and for no other cauſe. And it ſeemeth the King by his Writ may command the Sheriff to chooſe two or three Coroners, if there want ſo many in the County.

[164]

And if the Sheriff chooſe one to be Bailiff of the Hundred or Wapentake: or if the Lord of a Liberty chooſe one to be Bailiff of the liberty, who hath not ſufficient land within the County, according to the Statute of *Weſt.* 2. (but ſee the Statute of 2 *E.* 3. *cap.* 4. thereof) then a writ ſhall be ſent to the Sheriff for to diſcharge ſuch Bailiff, and to chooſe another in his place, and upon that a man may have an *Alias*, and *Pluries*, and Attachment againſt the Sheriff, if that he do not according to the writ; and the writ is ſuch:

Rex Vic. &c. *Cum in Statuto apud* Weſtmin. *nuper edit. contineatur, quod nullus ſit vic. vel ball. libertatis. wapentag. hundreds nec tithingi, niſi habeat terras & tenementa ſuffic. in eodem*

eodem Comitatu, unde nobis ſeu populo noſtro in hac parte reſpondere poſſit, ſi quis ſuper eum conqueri voluerit, jamque intelleximus, quod W. *de* T. *qui terras ſeu tenementa in eodem Comitatu non habet, hall. wapentagii noſtri de* B. *feciſti, in noſtri contemptum, & populi noſtri in hac parte damnum non modicum & gravamen, & contra formam Statuti prædict. Et ideo tibi præcip. quod ſi ita eſt, tunc ipſum* W. *à hall. præd. ſine dilatione amoveri facias, & alium loco ſuo competentem conſtitui vel ordinari fac. juxta formam Statuti prad. Teſte,* &c.

Writ de Electione Viridariorum Foreſtæ.

THE Writ of Election of the Verderors of the Foreſt, lieth, where any of the Verderors are dead, or removed from their Offices, *&c.* Then the King ſhall ſend a writ to chooſe another in his place, and it ſhall be directed to the Sheriff, and is ſuch :

Rex Vic', &c. *Quia* A. *nuper unus viridar. noſtrorum foreſtæ noſtr. mortuus eſt, ut accepimus : ideo tibi præcipimus, quod ſi ita eſt, tunc in pleno com. tuo de aſſenſu ejuſdem comit. loco prædict.* A. *eligi facias unum alium viridarium, qui præſtito ſacramento prout moris eſt, ex tunc ea faceret & conſervaret quæ ad officium viridarii pertinent in foreſta prædict',* &c.

And by that it appeareth, that the Verderor ſhall be choſen in the ſame manner as the Coroner of the County ſhall be choſen by the Free-holders of the County.

And if a Coroner or Verderor be diſcharged of his office by falſe ſuggeſtion by the King's writ directed to the Sheriff, then the party may come into the Chancery, and require a Commiſſion to enquire of the ſaid falſe ſuggeſtion, and to return the enquiry before the King into the Chancery; or the Juſtices of the Foreſt may certifie the King of the falſe ſuggeſtion under their ſeals; and if it be found to be falſe, then the King may make a *Superſedeas* to the Sheriff, that he do not remove the Verderor, if, *&c.* And if he be removed that he ſuffer him to exerciſe his office as he did before, and the Writ is ſuch:

Rex Vic. &c. *Licet nobis ſugg. in cancellar. noſtra, quod* A. *unus viridariorum in foreſta noſtra de* S. *non habuit terras ſeu tenementa infra limites foreſtæ prædict. nec infra foreſtam prad. morabatur : Tibi præcip. quod ſi ita eſt, tunc in pleno Com. tuo de aſſenſ. ejuſd. com. loco prædict.* A. *eligi faceres unum alium viridar. qui præſtit. ſacramento, prout moris eſt, extunc ea fac. & conſerv. quæ ad offic. virid. pertin. in foreſta prad. quia tamen teſtificat. eſt, coram nobis in canc. noſtra per dilect. & fidel. l.*

de

de S. *Juſtic. noſtr. ultra* Trentam, *quod idem* A. *terr. & tenementa habet ſufficient. infra foreſtam pradict. & idon. & ſufficiens exiſtit pro officio ſupradict. Nos nolentes ipſum* A. *ab offic. illo occaſione hujus falſa ſugg. amoveri: Tibi præcip. quod execut. brevis noſtri prad. occaſione falſa ſugg. prad. tibi direct. ſuperſed. omnino, & præfat.* A. *offic. illud exercere permittas, ſicut hactenus fieri conſuevit. Teſte,* &c.

Writ for the Election of the Clark to take Obligation upon Statutes Merchant.

THE Writ for the Election of the Clerk aſſigned to take and make Obligation thereof by Statute Merchant lieth where the Clerk who is aſſigned to take ſuch Obligation, dwelleth in another place, or is buſied in other affairs that he cannot intend or follow the Office, or that he hath not ſufficient lands, *&c.* to anſwer for his miſdoing, then upon a Surmiſe made in the Chancery, ſuch writ ſhall be made di- [165] rected unto the Mayor or Bailiff to diſcharge him, and to chooſe another: and the writ is ſuch, *viz.*

Rex ballivis & probis hominibus vill. de H. *ſalutem. Quia ex relatu accipimus plurimorum qd.* B. *qui cuſtod. majoris pecia ſigilli juxta formam Statuti de* Acton Burnell *in villa prad. accipiend. deputat. jam habet, in villa prad. moram non facit per qd. ad ea quæ ad officium ſuum pertin. in hac parte faciend. intendere non poteſt, in mercatorum & aliorum ad dict. vill. confluent. diſpend. non modic. & gravamen: Vobis mandamus, qd. ſi ita eſt, tunc loco ipſius* R. *eligi fac. unum alium homin. de vill. pd. qui ad illam cuſtod. pertin. faciend. melius ſciat & poſſit intendere, & nos de nomine illius quem ſic elegeritis, communi ſigill. veſtro diſtincte & aperte ſine dilatione reddatis certiores, hoc breve nobis remittentes, Teſte,* &c.

And it appeareth by the Statute *de Mercatoribus*, That the King ſhall make the Clark, and by it appeareth, That the Mayor or Bailiffs ſhall chooſe the Clark, *&c.* but it ſeemeth that writ is granted *ex gratia Regis.* For he might ſend a writ of diſcharge unto the Clark, and make a new Clark (as it ſeemeth) at his pleaſure.

Writ

Writ de non ponendis in Aſſiſis & Juratis.

29 E. 3. 15. One was choſen by 4 Knights in a Writ of Right upon the Grand Aſſiſe, and after he ſhewed a Charter of Exception *De non ponendis*, &c. and it was not allowed, the ſame ſuit in Attaint.

THE Writ *De non ponendis in Aſſiſis & Juratis* is grounded upon the Statute of *Weſtmin.* 2. *cap.* 38. and upon the Statute of *Articuli ſuper Chartas, cap.* 9. which Statutes declare what perſons the Sheriff ought for to empannel, and what number he ought to empannel in Juries and Inqueſts, and the Writs declare the Effects of the Statutes; and the Writ ſhall be ſuch:

Rex Vic', &c. *Cum inter cæteros Articulos quos dominus* E. *quond. Rex* Angl. *&c. ad emendand. ſtatus populi regni ſui ordinavit, conceſſum ſit, quod nullus Vic. vel ballivus ponat in inquiſition. nec jurat. plures homines, nec alios, nec alio modo quam ordinat. eſt per ſtatutum, & quod ponant in inquiſitionibus & juratis hujuſmodi homines magis propinquos, magis ſufficient. & minus ſuſpectos: Et qui ſecus fecerit, & inde convict. fuerit, reddat quærenti damna ſua in duplum, & ſit in gravi mia noſtra: Tibi præcipimus, quod in jurata 24 Militum quam* H. T. *de* K. *arrainavit coram, &c. per breve noſtrum verſus* W. F. *ad convincend. Juratores aſſ. novæ diſſeiſinæ, quæ inter ipſum* W. *& præf.* H. T. *& alios in brevi noſtro originali content. ſum. fuit & capta apud* E. *per breve noſtrum coram nobis de tenementis in* C. *homines vicinit. illius magis propinquos, magis ſuffic. & minus ſuſpect. per quos rei veritas melius ſciri poterit & inquiri, poni fac. juxta formam Articulorum prad. & hoc nullatenus omittas.*

And by this Writ it appeareth; When a man ſueth an Aſſiſe or Attaint, or ſuch Actions, in which are Jurors at the firſt day, *&c.* That he may alſo ſue this Writ directed to the Sheriff, that he return the pannel according to the Statute; And if the Sheriff doe not accordingly, then it ſeemeth the party ſhall have an Attachment againſt the Sheriff. And this Writ may be ſued as well by the Defendant as by the Plaintiff or Demandant, and alſo although that the Party do not ſue forth the Writ, yet if the Sheriff or Bailiff of the Liberty return a pannel againſt the form of the Statute, the Party Defendant or Plaintiff may have an Action upon the Statute againſt the Sheriff, *&c.* becauſe the Statute is a Prohibition in it ſelf; and the form of the Writ of Attachment upon the ſame is ſuch:

Rex Coronatoribus ſuis in Com. Linc. *&c. Ponite per vadia*, &c. B. *Vic. noſtrum com. prædict. quod ſit oſtenſur. quare cum inter cæteros Articulos*, &c. (uſque ibi,) *in gravi miſericord. noſtra, & nos nuper ad proſecutionem* H. *aſſerentis quandam*

inquiſ-

inquiſitionem capi deber. coram Juſtic. noſtris prad. de loquela, qua fuit coram eiſdem Juſtic. per breve noſtrum int. R. petentem & T. tenentem de manerio de S. cum pertin. præcipimus præfat. Vic. quod in inquiſit. illa homines magis propinq. magis ſufficient. & minus ſuſpectos poneret, juxta formam Statuti & Articulorum prad. idem Vic. in eadem inquiſitione homines magis remotos, minus ſuffic. & magis ſuſpectos poſuit, contra formam eorundem Statuti & Articulorum, ac contra tenorem mandati noſtri prad. ut dic. & habetur, &c.

D And by the Statute of *Weſt.* 2. aforeſaid, The Sheriff ought not to empannel men who are ſick or decrepit, nor men who at the time of the Summons were not dwelling within the County, nor men above the age of Threeſcore and ten years, *&c.* and if he do, then he, or thoſe who are empannell'd by the Sheriff may ſue this Writ unto the Sheriff, commanding him that he do not empannel them, *&c.*

And Barons who are Lords ſhall not be empannelled upon Inqueſts nor Aſſiſes, *&c.* if their preſence be not neceſſary, but they ſhall have a Writ unto the Sheriff to diſcharge them, thus: 48 E. 3. 3. 27 H. 8. 19.

E *Rex Vic'*, &c. *Quia Barones regni noſtri in Aſſiſis, Juratis, ſeu Recognitionibus aliquibus poni conſuever. ut dicunt, niſi eorum ſacramentum adeo ſit neceſſarium, quod ſine illis veritas inquiri non poſſit: Tibi præcipimus, quod dilectum & fidelem noſtrum A. in Aſſiſis, Juratis ſeu Recognitionibus aliquibus non ponas ſeu poni facias contra voluntatem ſuam, ſine mandato noſtro ſpeciali, niſi ſua præſent. ob aliquam cauſam ſpecialiter exigatur. Teſte,* &c. [166]

But if the Sheriff hath returned any Lord in Juries or Aſſiſes, *&c.* then he ought to bring a Writ unto the Juſtices, reciting that he is a Peer of the Realm, commanding them for to diſcharge him, otherwiſe he ſhall be ſworn, and if he do not appear, he ſhall loſe iſſue, *&c.*

A There are alſo other Writs for thoſe who are ſick, or paſt 70 years of age, or thoſe who are not dwelling in the County, and the Writ is ſuch:

Rex Vic', &c. *Cum de com. conſilio,* &c. *proviſum ſit, quod homines perpetuo languidi.* Vel ſic, *Quod homines tempor. ſum. Vic. in patria non commorantes.* Vel ſic, *Quod homines ætatem lxx. annorum exceden. non ponantur in Aſſiſis, Juratis,* &c. *Tibi præcipimus, quod ſi A. ſit perpetuo languidus.* Vel ſic, *ætatem lxx. annorum excedens, vel in tempore ſum. tua in balliva tua, vel com. tuo moram non fecerit tunc ipſum,* &c. *in Aſſiſis, Juratis, ſeu Recognitionibus aliquibus non ponas, ſeu poni facias contra formam proviſionis prad. Teſte,* &c.

Clerks who have Lands or Tenements by deſcent or B purchaſe may be put and ſworn in Aſſiſes and Inqueſts as well as other Lay-perſons, as appeareth by the Regiſter, and it ſeemeth the Law is ſuch. But if ſuch Clerk be in the King's ſervice, he ſhall have a ſpecial Writ for to diſcharge him, and the Writ is ſuch:

Rex Vic', &c. *Quia Magiſtr.* R. *Clericus in obſequio noſtro, vel in obſequio venerabilis Patris* J. Elienſ. *Epiſc. bis diebus moram fac. continuam, ut dicitur: Tibi præcipimus, quod ipſum* R. *occaſione terrarum & tenementor. quæ tenet in comitat. prædict. in aſſiſis, juratis, ſeu recognic. aliquibus non ponas ſeu poni fac. quamdiu in obſequio noſtro, vel ejuſdem Epiſc. moram facit ſupradict. Teſte*, &c.

And by the Writ it appeareth, that a Clerk ſhall be put and returned in Pannels and Juries, if he be not in the ſervice of the King or other perſon for whom the King will write to the Sheriff, that he do not empannel him, *&c.* But if the Sheriff do empannel and return ſuch Clerks, they ought for to appear, otherwiſe they ſhall loſe iſſues, and they have no remedy if they have not ſuch Writ as before.

And if the Sheriff do empannel, or return them in Juries C after ſuch Writ directed unto him, then, as it ſeemeth, They ſhall have Attachment againſt the Sheriff, *&c.*

But if the Sheriff do return men who are dwelling in D other Counties, or paſt 70 years of age, or thoſe who are ſick, then they ſhall have an Action upon the Statute againſt the Sheriff, although they have not ſued forth ſuch Writ directed to the Sheriff, becauſe the Statute is a Prohibition to him, that he return not ſuch perſons, and, it ſeemeth, the Sheriff is bounden to take notice of the Statute at his peril; *tamen quære.*

And if the Sheriff do return any pannel men who are not ſufficient to paſs in the Action of Lands and Tenements, *&c.* then the Juror may have an Action upon the Statute; which is ſuch:

Rex Vic', &c. *Cum ad communem utilitatem populi regni noſtri de commu. conſilio ejuſdem regni ſtatutum ſit, Nè quis ponatur in Aſſ. juratis ſeu recognitionibus aliquibus, niſi habeat terras aut tenementa ad valenc.* xl. s. *per annum ad minus, ita tamen quod coram Juſtic. itinerant. ad communia placita in itineribus ſuis, & etiam in aſſiſis, juratis ſeu recogn. quæ civitatibus burg. & aliis villis mercatoribus emiſerint faciend. fiat prout hactenus fieri conſuevit: Tibi præcipimus, quod ſi h. terras vel tenementa ad valenc. tanti per annum non habeat,*

tunc

hunc ipſum A. *in aſſiſis, juratis, ſeu recogn. non ponat ſeu poni faciat contra formam Statuti*, &c.

E And if the Sheriff doe the contrary, *&c.* he ſhall have an Attachment againſt the Sheriff. And by the Statute the Sheriff ought not to empannel any Juries to try any matter which ſhall be tried out of the County, if they may not expend 5 *l.* by the year, *&c.* And if he do, the party ſhall have an Action upon the Statute of 21 *E.* 1. *de ponendis in Aſſiſis & Juratis.*

F And if the Sheriff return to any pannel men who dwell within ancient Demeſn for their lands within ancient Demeſn, then they may have a Writ againſt the Sheriff, that he do not return them: and the Writ is ſuch:

Rex Vic. Cum ſecundum legem & conſuetudinem regni noſtri hactenus obtentam & approbatam, homines & tenentes de maneriis quæ ſunt de antiquo dominico Coronæ Angl. *pro terris & tenementis quæ tenent de eodem dominico in aſſ. jurat. ſeu recogn. aliquibus poni non debeant, niſi tantum in his quæ in Cur. hujuſmodi maner. debeant fieri: Tibi præcipimus, quod homines & tenentes noſtros de maner. noſtro de* I. *quod eſt de antiquo dominico Coronæ* Angl. *un. dic. pro terris & tenementis quæ tenent de eodem manerio, in aſſiſis, juratis, ſeu recognic. aliquibus extra Cur. maneriorum prædict. non ponas, ſeu poni facias contra legem & conſuetud. prædict. niſi terras & tenementa de alia tenura teneant, per quam ſecundum formam Statuti de communi conſilio regni noſtri inde proviſi, in aſſ. juratis, ſeu recogn. poni debeant, & diſtrictionem ſi quam eiſdem hominibus & tenentibus noſtris occaſione prædict. feceris, ſine dilatione relaxes eiſdem. Teſte*, &c.

And by that Writ appeareth, That all the Tenants may [167] ſue the Writ, as they may ſue forth a *Monſtraverunt*; and if the Sheriff do contrary to the Writ, they ſhall have an Attachment againſt him, and any of the Tenants may ſue the Writ in his own name if he will; and then the Writ ſhall be ſuch:

Rex Vic', &c. (ut ſup. uſque,) *Tibi præcipimus, quod* A. *tenentem*. Vel ſic; A. *& B. tenentes de manerio de* M. *quod eſt de antiquo dominico*, &c. ut ſuprá.

And although that the Manor be not in the King's hands; yet the Tenants ſhall have the Writ againſt the Sheriff if he empannel them, *&c.* And alſo they ſhall have the ſame Writ againſt the Bailiffs of the Liberty who have return of Writ, if they return any of the Tenants who hold of a Manor which is ancient Demeſn, for Juries, Aſſiſes, or Inqueſts; *&c.*

And alſo the Sheriff ought not to return Coroners in Aſſiſes, Juries, or Inqueſts, nor Verderors, nor Foreſters, nor other Officers of the Foreſt, as they may have a Writ for to diſcharge them; and the Writ ſhall be ſuch:

Rex Vic', &c. *Quia* A. *unus Coron. noſtrorum com. tui ad ea quæ ad officium coron. pertin. in eodem com. exercend. intendere non poteſt, ſi in Aſſ. Juratis ſeu Recogn. aliquibus ext. eundem com. ponat. Tibi præcip. qd. ſi ita eſt, tunc* A. *in Aſſ. Jurat. ſeu Recogn. aliquibus extra com. tuum non ponas ſeu poni fac. quo minus officio intend. poſſit ſupradict.*

And by that it appeareth, That the Sheriff may return the Coroner to enquire of affairs in the County before Commiſſioners or Juſtices of the Peace. But upon actions ſued in the Common Pleas, or King's Bench, they ſhall not be returned in any pannel. And for Verderors or Foreſters, or other Officers, the Writ is ſuch:

Rex Vic', &c. *Cum Dom.* Edw. *quondam Rex* Angl. *progenitor noſt. per literas ſuas patent. conceſſit pro ſe & hared. ſuis quod foreſt. viridar. aut alii miniſtri foreſt. ſua non ponant in Aſſ. Juratis ſeu Recogn. aliquibus extra foreſtam illam capiend. Tibi præcip. qd. ſi* H. *viridarius noſter foreſtæ noſtræ de* S. *exiſtat, aut foreſtar.* &c. *tum ipſum* H. *in Aſſ. Jurat. ſeu Recogn. aliquib. extra foreſtam illam capiend. non ponas ſeu poni fac. juxta form. proviſionis prædict. ut diſtrict. ſi quam.* Vel ſic: *Quia unus viridar. noſtrorum foreſtæ noſtr. de* S. *in com. tuo, ad ea quæ ad offic. viridar. pertinent, in eadem foreſta exercend. intendere non poteſt, ſi in Aſſ.* &c. *ponatur extra foreſtam prad'. Tibi præcipimus,* ut ſupra.

Writ upon the Statute of 23 Ed. 3.

IF a man do retain my Servant being in my ſervice, for B which the Servant departeth from me, &c. and goeth to ſerve the other, I ſhall have an Action againſt him who retained him, and againſt the Servant upon the Statute of 23 *Ed.* 3. And the Writ ſhall be Attachment againſt them becauſe the Statute is a Prohibition to them, that they ſhall not doe ſo; and the form of the Writ is ſuch:

Rex Vic', &c. *Si* A. *fecerit,* &c. *tunc attachias* I. *de* B. *ita qd. eum habeas coram Juſtic. noſtris,* &c. *ad reſpond. tam nobis quam præfat.* A. *quare cum per nos & conſil. noſtrum pro communi utilit. regni noſtri ordinat. ſit. Quod ſi aliquis meſſor, falcator, aut alius operar. vel ſerviens cujuſcunque ſtatus ſeu condit. fuerit in ſervitio alicujus retent. ante finem termini concordat. à dicto ſervitio ſine cauſa rationabili vel licentia receſſerit*

pen.

pen. imprisonamenti subeat. & nullus sub eadem pœna talem in servitio suo reciper. vel retiner. præsumat: Nec ullus vadia, liberationes, merced. seu salaria majora quam solita sunt præstar. anno regni Regis E. 3. progenitor. nostri 20 vel annis communibus quinque vel sex proxim. precedentibus, alicui servienti solvat vel solvere permittat sub pœna dupl. illius quod sic solutum aut promiss. fuerit illi qui ex hoc senserit se gravat. applicand. præd. I. R. de C. nuper servien. præd. A. in servit. suo apud B. retent. qui ab eodem servit. ante finem termini inter eos concord. fact. sibi præmiss. per ipsum I. de salar. plus solit. recipiend. sine causa rationabili & licenc. præfat. A. recessit, in servic. ipsius I. quanquam ipse de præf. B. eidem A. restituend. requisitus fuerit, admissi & retinuit, in nostri contemptum, & ipsius A. grave damnum, & contra form. ordination. præd. attachias etiam præf. R. ita qd. cum habeas tunc ibid. ad respond. tam nobis quam præf. A. quare A. servit. ejusd. A. sine causa rationabil. & licencia sua, ut præd. est recessit in nostri contempt. & ipsius A. grave damnum, & contra ordinationem præd. & habeas ibi hoc breve. Teste, &c.

C And if a man be required to ſerve, and hath nôt Lands nor Tenements to live upon, nor other Art or Trade, and he refuſeth to ſerve, then he who requireth him to ſerve ſhall have this Writ:

Rex Vic' &c. Si W. &c. tunc attachias R. ita quod eum habeas coram Justic. nostris, &c. ad respondend. tam nobis quam præf. W. quare cum per nos & consil. nostrum pro communi, &c. (ut ſupra uſque ibi) ordinat. sit, quod quilibet homo & fœmina dicti regni nostri, cujuscunque conditionis fuerit libera vel servilis potens in corpore, & infra ætatem sexaginta annorum, non vivens mercatura, nec certum exercens artificium, nec habens de suo propris unde vivere possit, nec terram propriam circa cujus culturam se poterit occupare, & alteri non serviens, si de serviend. in servitio congruo considerato statu suo fuerit requisitus, servire teneatur illi qui primo duxerit requirend. & percipiat duntaxat vadia liberation. mercedes, seu salaria quæ in locis ubi servire debeat consueta sunt præstari, Anno regni regis Ed. 3. 20. vel annis communibus quinque vel sex præced. Et si talis vir vel mulier sic de serviendo requisitus hoc facere noluerit, statim capiatur & mittatur proxima gaola, & ibidem sub arcta moretur custod. quousque securit. invener. de serviend. in forma prædict. idem R. de conditione hujusmodi existens præfat. W. quanquam ipse ad serviend. eidem W. pro salario statui suo competenti dictis annis communibus precedent. conf. sapius requisit. fuerit, penitus servir. recus. in nostri contemptum, & ipsius W. grave damnum, & contra formam ordination. prædict. & habeas, &c. Teste, &c.

And if the Servant be retained in Winter to ſerve, and after he will depart from his Maſter in the Summer, and ſerve in another place, then he whom he ſerved in Winter, ſhall have a Writ to compell him to ſerve him in Summer, which is ſuch: A

Rex Vic', &c. *Si* W. *de* C. *&c. tunc pone* I. *de* S. *quod ſit*, &c. *ad reſpond. tam nobis quam præf.* W. *de* G. *quare cum per nos & conſil. noſtrum pro communi utilitate regni noſtri ſtat. ſit, quod nullus ſerviens cujuſcunque ſtat. fuerit ſeu conditionis extra villam, ubi moratur in Hyeme ad ſerviendum alibi in aſtate, & ſervitium in eadem villa invenire poſſit ſub pœna impriſonamenti exeat, excepto quod homines in comitatu* Staff. Lanc. *&* Derb. *&* de March. Walliæ *tempore* Auguſti *ad laborandum in aliis com. venir. & ſalvo, prout hactenus facer. conſuever. redir. poſſit, præfat.* I. *in ſervitio ipſius* W. *apud* F. *in Hyeme nuper retentus, prædict.* W. *ſeu aliqui alii in villa prædict. quanquam ipſe ad ſerviend. in eadem villa pro ſalario competenti ſæpius requiſitus fuerit ſervire recuſavit, in noſtri contemptum, & ipſius* W. *grave damnum, ut contra formam ſtatuti prad. & habeas ibi nomina pleg. & hoc breve. Teſte*, &c.

The Lords of Dowers, or Juſtices of Peace, may commit Vagrants to priſon, if they will not ſerve, and they may command the Gaoler to ſet him at liberty, without any other Writ. B

And if a man be retained in Service, and go wandring abroad out of his Service, another man may compell him to ſerve him, *&c.* becauſe he is out of Service. C

And ſo if a man do retain anothers Servant, not knowing that he was in the Service of the other, he ſhall not be puniſhed for ſo doing, if he do not retain him after notice of his firſt Service.

An Infant of 12 years of age ſhall be bound by his Covenant to ſerve in Husbandry. D

A Woman of ſuch age ſhall be alſo bound to ſerve in Husbandry by her Covenant.

If a man take an Infant or other out of anothers Service, he ſhall be puniſhed, although the Infant or other were not retained.

An Infant by his Covenant ſhall be bounden to ſerve in Husbandry, although he may ſpend 40 s. or 12 Marks by the year.

And ſo a Gentleman by his Covenant ſhall be bound to ſerve, although he were not compellable to ſerve. For if a Gentleman, or Chaplain, or Carpenter, or ſuch which ſhall not be compelled to ſerve, *&c.* yet if they covenant to ſerve they E

they ſhall be bound by their Covenant, and an Action will lie againſt them for departing from their Service.

F And if a man do retain one to ſerve him for 40 days, and another doth afterwards retain him to ſerve him for a year, the firſt Covenant is avoided, becauſe the Retainer was not according to the Statute.

And ſo if a man be retained to ſerve at every time he ſhall be required, it is no Retainer according to the Statute, but a Covenant, if it be by Deed; and without Deed it is void.

G And a man ſhall not have an Action againſt an Apprentice upon his departure, upon the Statute.

H And if a man do retain one to ſerve him, and doth not expreſs for how long he ſhall ſerve him, he ſhall ſerve him for a year: for that Retainer is according to the Statute.

If a man who is not to have any Servant, do retain one to ſerve him, *&c.* the Retainer is void.

I He who hath not ſufficient Lands of his own to occupy, ſhall be compelled to ſerve.

K And a man may retain one for two or three years, and it is good.

L And keeping from the Servant meat and drink, is a good cauſe for his departure from his Service.

And ſo for Battery, or Licence to depart, is a good cauſe of departure.

M The Lord may take his Villain out of the Service of another, if he hath need of Servants, otherwiſe not.

N If a woman who is a ſervant doth marry, yet it ſeemeth ſhe ought for to ſerve.

O If the husband and wife be retained in ſervice during their marriage, *&c.* if they depart from their ſervice, an Action upon the Statute lieth againſt them.

P If the ſervant be drawn away, the maſter may re-apprehend him, and keep him in ſpight of him.

Q If the Maſter's Wife do beat the Servant, it is good cauſe for the Servant to depart and leave his ſervice.

Writ de reſtitutione temporalium.

THE Writ of Reſtitution of the Temporalties lieth, in caſe a ſpiritual perſon be elected a Biſhop, and conſecrated, *&c.* Then he ſhall have the Writ unto the Eſcheator, *&c.* And ſo is it of an Abbat or Prior, which is of the King's foundation, and ought to have the King's Royal aſſent, *&c.* when he is elected and eſtabliſhed Abbat or Prior, he ought to ſue a Writ to be reſtored unto the Temporalties; and the form of the Writ for the Prior is ſuch:

Rex Eſcheatori ſuo in Com. Devon. *ſal. Cum venerabil. pat.* A H. Exon. *Epiſc. electionem nup. fact. in Eccleſ. conventuali de* P. *de dilecto nobis in Chriſt. fratre* I. *de* C. *Canonico ejuſdem dom. in Prior. loci illius, cui prius regium aſſenſ. adhibuimus & favorem, confirmaverit, ſicut per literas patentes ipſius Epiſcopi nobis inde directas conſtat: Nos confirmationem illam acceptantes, cepimus fidelitatem ipſius Electi, & temporalia prioratus pradict. (prout moris eſt) reſtituimus eidem. Et ideo tibi præcipimus, quod eidem Electo temporalia prioratus pradict. liberes in forma pradict.*

And by that Writ appeareth, when a Priory or Abbey is B void which is of the King's foundation, that they ought for to have the King's royal aſſent to go to the Election; and after the Election made, the Biſhop ought to confirm the Election, and to certifie the King thereof by his Letters, and thereupon the King to take his Fealty; and he to grant this Writ to reſtore the Temporalties.

And there is another Writ when the King granted onely his aſſent to go to the Election, and to make the Prior without any certificate made before of the Election; and the Writ is ſuch:

Rex, &c. Cum venerabilis pater, &c. dilectum nobis in Chriſto fratrem C. *de* D. *Canonicum ejuſdem domus in Priore loci illius elect. cui electioni prius regium aſſenſum adhibuimus & favorem, in Priorem ejuſdem loci profecerit & paſtorem, ſicut per literas patentes ipſius Epiſc. nobis inde direct. nobis conſtat, nos profectionem illam acceptantes, cepimus fidelitatem ipſius profecti & temporalia Prioratus prad', &c.* ut ſupra.

And the Prior ſo elected and eſtabliſhed, may have a C Writ out of the Chancery directed unto the Tenants of the Priory, that they do accept him for their Prior and Lord, *&c.* and that they be Attendants, *&c.*

And where the Prior or Abbat ought to have the King's D royal aſſent to go to Election, and obtain the ſame, and afterwards

afterwards make the Election, and the Biſhop doth avoid it, and afterwards they ſubmit unto the Award and Arbitrement of the Ordinary, to name to them one to be Prior, &c. And make him Prior, and certifie the King thereof by his Letters, The King thereupon may grant ſuch writ, *viz.*

Rex, &c. *Cum Venerabilis pater* I. Wint. *Epiſc. Electi. nuper fact. in Eccleſ.* S. D. *jecta* S. *de dilecto nobis in Chriſto fratre* T. *de* N. *Canonico ejuſdem Domus in Priorem loci illius cauſavit: & virtute ſubmiſſionis conventus loci prad. ſibi fact. de providend. eidam Prioratui de Prior. idoneo illa vice, dilect. nobis in Chriſto fratrem* I. *de* W. *Canonicum ejuſdem Prioratus in Priorem loci illius præfecerit & paſtorem ſicut per literas patentes ipſius Epiſc. nobis inde direct. nobis conſtat, nos cum eodem* I. *volent. agere gratioſe, ceperimus fidelitatem dicti* I. *& temporal. Prior. illius prout moris eſt, reſtituimus eid. Et ideo tibi præcip.* &c. *ut ſupra.*

And by that writ appeareth, That the writ is of the King's ſpecial grace; for the King might lawfully refuſe the eſtabliſhment of the Prior, becauſe he was not elected according to the King's Licence and aſſent to the ſame, &c. But yet the common uſe is, That if they cannot agree in the Election to ſubmit themſelves unto the award of the Ordinary.

And there is another form of Writ where the King grants his Royal aſſent to any Chapter to chooſe the Biſhop; and they Chooſe one of the Chapter, and becauſe the Archbiſhoprick is void, the Guardian of the Spiritualities doth certifie that Election unto the King, and his Confirmation upon the ſame; and upon that the King grants a writ of Reſtitution, &c. in ſuch form.

Rex, &c. *Cum dilect. nobis in Chriſto Prior & Capitulum Eccleſ. Chriſti* Cant. *Cuſtod. ſpiritualitat. Archiepiſcop.* Cant. *ſede vacante, electionem nuper celebrat. in Eccleſ. Cathed. moverid. de diſcreto viro magiſtro* H. *de* H. *Archidiacono induend. & Canonico ejuſdem Eccleſ. in Epiſc. loci illius, cui prius Regium aſſenſum adhibuimus & favorem confirm. ſicut per literas patent. ipſorum prioris & capituli nobis inde directis nobis conſtat, nos confirmationem*, &c. *ut ſupra.*

F And before the Statute of *Præmunire*, The King might ſeiſe the Temporalties of the Biſhop, if he came to the ſame by Proviſion of the Pope; but now he ſhall forfeit all his Lands and Goods by the Statute of 16 *R.* 2.

G And it appeareth by the Regiſter, if a Biſhoprick of *Ireland* be void, that they ſhall ſue to the King here in *England* to go to Election of another, and after the Election made,

made they ought to have his Royal aſſent to that Election, upon Certificate of the Election to the King. And thereupon a writ ſhall be out of the Chancery here to the chief Juſtice of *Ireland*, or his Leiutenant, rehearſing the whole matter, commanding him to take the Biſhop's Fealty, and to reſtore to him the Temporalties; but now the courſe in *Ireland* is to make ſuch writs there in the King's name, but the King doth nominate the Biſhops there, and alſo in *England*; and then the Chapter ſhall chooſe him whom the King hath nominated unto them; and thereupon the Writs are made of courſe.

But how and in what manner Archbiſhops and Biſhops A
ſhall be elected, nominated, preſented, inveſted and conſecrated unto the dignity of an Archbiſhoprick or Biſhoprick; See the Statute thereof made, 25 *H.* 8. *cap.* 2.

And the King may give power to another, to give his B
aſſent to go unto the Election, and to certifie the ſame Election unto him again, and thereupon to take the Fealty of the Abbat, Prior or Biſhop, and to certifie the King thereof in the Chancery. And the writ of *Dedimus poteſtatem* ſhall be ſuch:

Rex dilecto ſuo I. *de* C. *Conſtabulario ſuo caſtri ſui de* A. B. *ſal. Compatientes paupertati dilectarum nobis in Chriſto ſupprioreſſæ & monialium Prioratus de* B. *vacantis per mortem bonæ memoriæ* M. *nuper Prioreſſæ loci illius, cui licentiam nuper conceſſimus eligend. ac volentes ipſarum laboribus & expenſ. parcere, gratioſe dedimus tibi poteſtatem præbend. aſſenſum regium vice noſtra electioni de futura Prioreſſa in dicta Eccleſia facta ſeu in proximis faciend. Et cum electio hujuſmodi per literas patentes ipſarum ſuppriorefſæ monialium cum ſigillo capituli ſui ſignatas nobis inde directas, tibi fuerit præſentata ad hujuſmodi aſſenſum loci Dioceſano per veſtr. literas ſignificand. ut quod ſuum eſt ulterius exequatur, nec non recipiend. fidelitat. nomine noſtro ejuſdem Prioreſſæ, ſi extingat electionem prad. Canonicè confirmari, & tibi inde per literas patentes ipſius Dioceſani nobis inde directas conſtiterit, & ideo tibi mandamus, quod circa præmiſſa facias in forma prad. & nos de fidelitate prad. cum illam ceperis ſub ſigillo veſtro diſtincte & aperte reddas certiores, mittent. nobis tam literas ipſarum ſuppriorefſæ & monialium, quam literas ipſius Dioceſani ſupradict. Teſte,* &c. *ut ſupra.*

And if the Dean and Chapter go to the Election of the C
Biſhop without the King's aſſent, and certifie the ſame to the King, The King may chooſe whether he will aſſent to the election or not; And if he will give his Royal aſſent

to

to the ſame, Then he ſhall ſend a ſpecial Writ to ſome perſon to take the Fealty of him; and the Writ in the Regiſter is ſuch:

Rex dilecto & fideli ſuo I. Juſtic. ſuo Hibern. *ſalutem. Cum dilecti nobis in Chriſto Decanus & capitulum Eccleſ. de* B. *vacan. nuper Eccleſia ſua prædict. per mortem bonæ memor.* Lucæ *nuper Epiſc. loci illius dilect. nobis in Chriſto* M. I. *Decanum Eccleſ. prædict. in ſuum Epiſcopum elegerunt & paſtorem, & nobis per ſuas patentes literas ſupplicaverunt, ut Electioni regium aſſenſum adhibere dignaremur: Nos licet idem Decanus & Capitulum prius à nobis Eligend. licen. non poſtulaverint, ut eſt moris, volentes tamen eis hac vice grati facere ſpecialem, eidem Electioni Regium aſſenſum duximus adhibend. Nolentes, quod quamvis ipſi hujuſmodi licentiam minime poſtulaver. moleſtentur in aliquo ſeu graventur: Volentes inſuper, eid. Electo, ut ipſius precat. laboribus & expenſ. grac. fac. uberiorem: vobis dedimus poteſtatem, quod ſi contingat Election. homini per loci metropolitan. Canonic. confirmari, & vobis unde per literas patent. loci ipſius Metropolitanus nobis inde direct. conſtiterit, tunc fidelitat. ipſius Electi nobis debitam in hac parte noſtro nomine recipiatis, & ei temporalia Epiſcopatûs illius prout moris eſt reſtit. faciatis vice noſtra, receptis prius ab Epiſcopo Elect. literis ſuis factis ſigillo ſuo, &c. & ſigillo capit. ſui ſignatis, quod gratia noſtra, quam eidem Electo ad præſent. ex mera liberalitate noſtra fecimus, nobis vel hæredibus noſtris non cedat, &c. Teſte, &c.*

Licence to go to Election.

D THE form of the King's Licence to go to Election is thus:

Rex dilectis ſibi in Chriſto Priori & Conventui Monaſter. de Burg. S. Petri *ſal. Ex parte veſtra nobis eſt humilit. ſupplicatum, ut cum Eccleſia veſtra prad. per mort. bon. memoria W. ultimi Abbatis loci illius paſtoris ſit ſolatio deſtituta, alium vobis eligendi in Abbatem & Paſtorem ejuſdem domus licentiam vobis concedere dignaremur, nos precibus veſtris in hac parte favorabiliter inclinati, licentiam illam vobis tenore præſen. duximus concedend. mandantes quod talem vobis eligatis in Abbatem & Paſtorem, qui Deo devotus, Eccleſ. veſtr. prad. neceſſarius, nobiſque & Regno noſtro utilis & fidelis exiſtat. In cujus rei,* &c.

C I And when they have made their Election, they ought to ſue a writ to have the King's Royal aſſent to that Election, and that aſſent ſhall be made by writ, directed to the Biſhop of the Dioceſe, and ſhall be ſuch:

Rex

Rex Venerabili in Christo Patri P. eadem gratia Epiſc. Linc. *ſalut. Sciatis quod Electioni nuper fac. in Eccleſ. conventuali Monaſterii de B. veſtræ Dioceſ. vacan. per mortem bonæ memor. W. ultim. Abbatis loci illius de M. ſupprior. ejuſdem domus vel de fratre B. Monacho ejuſdem, dominus in Abbatem loci illius Regium aſſenſum adhibuimus & favorem, & hoc vobis tenore præſen. ſignificamus, ut quod veſtrum eſt in hac parte exequamini.*

And the Abbat when he is made Abbat, may ſue letters patents, directed to his Tenant, reciting how he is made Abbat, and how the King hath reſtored to him the temporalties, commanding them that they be attendant upon him as their Lord. F

Writ of Decies tantum.

THE Writ of *Decies tantum* lieth where any of the Jury who is ſworn, taketh of the one party, or of the other or both, to give their Verdict, *&c.* Then he who will may ſue this writ, for it is an action popular. And the writ of *Decies tantum* lieth againſt all the Jurors, although they ſeverally take ſumms of money, as ſome more, ſome leſs. A

21 H. 6. 32. 5 E. 4. 2. Therefore the releaſe of the Party is not good againſt the King.

40 E. 3. 33. 44 E. 3. 36. 36 H. 6. 8.

And *Decies tantum* lieth againſt an Embraceor, if he take money, as well as againſt a Juror, otherwiſe not.

27 E. 4. 5. One Juror may pray his companions to paſs with the one, or the other, becauſe he is perſuaded in Conſcience with him.

And an Embraceor is he who cometh to the bar with the Party, and taketh in the cauſe, or ſtandeth there to ſurvey the Jury, *&c.* or to put them in fear: but Lawyers may plead in the cauſe for their Fees, but they cannot labour the Jury, and if they take monies to do ſo, they are Embraceors. B

6 E. 14. 5. 23 H. 4. 16. ac. for Attornies.

And the *Decies tantum* doth not lie againſt the Embraceor if he embrace and take no money: for he ought to take money, and alſo embrace, if the action be maintained. C

37 H. 6. 31. ac. *per Curiam.*

And *Decies tantum* lieth againſt the Jurors, although they do not give a Verdict, if they take money: and ſo if they give a true Verdict, a *Decies tantum* lieth if they take money.

21 H. 6. 20. 1 Ma. Dyes 95.

And a *Decies tantum* may be ſued againſt the Jurors and Embraceors, and it may be ſued againſt the Juſtices of *Niſi prius* by bill, and it may be adjourned from them in *Banco*. D E

41 E. 3. 5.

And the form of the writ is ſuch:

Rex

Rex Juſt. ſuis de Banco ſal. Cum in Statuto noſtro apud W. an. regni noſtri v. edit. inter alia ordinat. ſit & ſtatut. quod ſi aliquis jurator in aſſ. jurat. vel inquiſit. capiat de una parte vel de alia & ſuper hoc debit. convinc. qd. extunc non ponat. in aſſ. juratis, nec inquiſit. & nihilom. committat. priſon. & ulterius redimat. ad voluntat. noſtr. at S. & W. nuper in quadam inquiſit. inter A. petent. & R. tenent. de uno meſuag. cum pertin. in N. coram vobis in banco pradict. capiend. poſiti, tam de prad. A. quam de prafat. R. contra formam Statuti prad. ceperunt accipim. Nos ſtatut. illud inviolabiliter volent. obſervari, vobis mandamus, quod vocatis coram vobis praf. W. & S. ſi vobis conſtar. poterit ipſius in inquiſit. prad. poſitus fuiſſe, & tam de pradict. A. quam de prafat. R. cepiſſe, ut pradict. eſt, tunc inſpecto Statuto pradict. ulterius inde faciatis quod de jure & ſecundum formam Statuti prad. fuerit faciend. Teſte, &c.

Certain Jurors took money of the party after their Verdict, without any Covenant made before, viz. each a mark and were thereof convict by Verdict, and fined each a Mark, ſo note that is out of the Statute, and there was no committing to priſon, 39 Aſſ. 19 Brion. *Decies tantum*, 15. 8 H. 6. 9, & 10. Not guilty is no plea in *Decies tantum*: but he ought to ſay that he took no money. 6 E. 43. For in a Writ of Maintenance he muſt ſay he did not maintain.

And upon this writ the Juſtices ſhall make Proceſs for the King againſt the party, which writ ſhall be a *Pone* (as ſeems) to attach him to appear, and to anſwer the King for the ſame: and there is another form of writ for the party thus:

Rex Vic, &c. Si W. H. fecerit, &c. tunc pone, &c. I. S. I. F. & W. K. *&c. quod ſint coram nobis à die S.* Michael. *in tres ſeptimanas ubicunque tunc fuerimus in* Angl. *ad reſp. tam nobis quam praf.* W. H. *quare cum in Parliament. Domin.* Ed. *nuper Regis* Angliæ, *&c. apud* Weſtm. *anno regni ſui tricefimo octavo tento, inter alia concordatum exiſtat, quod ſi aliqui juratores in Aſſiſis, juratis & aliis inquiſitionibus capiend. inter nos & partem, vel partem, & partem, quicquam capiant per ipſos vel per alios de parte conquerentis vel defendentis pro veredicto ſuo dicendo, & ſuper hoc per proceſſum in quodam articulo de juratoribus anno regni ejuſdem avi noſtri tricefimo quarto facto ordinat. convincat, ſive ſit ad ſectam partis quæ pro ſeipſo, vel pro nobis, aut alterius cujuſcunque perſona proſequi voluerit, ſolvat quilibet juratorum pradict. decies tantum quantum ipſe recipit, & habeat ille qui faciet ſectam, unam medietat. & nos aliam medietatem. Et quod omnes imbraciat. ducend. vel procurand. tales inquiſit. in patria pro lucro vel proficuo capiend. puniantur eodem modo & forma ſicut juratores, & ſi jurator vel imbraciator ita convictus, non habeat unde in forma pradict. ſatisfaciat, habeat priſonam unius anni, prout in ordinatione illa plenius continet. pradict. I. S. I. F. & W. K. juratores id quadam inquiſit. quæ nuper ſum. fuit & capta coram Juſtic. Domin. Ric.*

nuper

nuper Regis Angliæ secundi post conquestum, de banco apud Westm. *per breve ipsius nuper Regis de record. inter* R. F. *& prad.* W. H. *de averiis ipsius* R. *capt. & injuste detentis ut dic. positi, pro verdict. suo in hac parte dicend. ac pras.* W. D. *de* L. L. *imbraciatores ejusdem jurat. ad eam dicend. & procurand. de pras.* R. *diverf. pecuniar. sum. & alia dona apud villam* Westm. *ceperunt, in nostri contemptum, & ipsius* H. *grave dannum, & contra form. ordinationis prad. & habeat ibi nomina plegiorum, & hoc breve.* And Ambidexter is that Juror or Embracer, who taketh of one part and the other to restore ten times as much, *&c.* See Statute 27 *E.* 3. *cap.* 3. 33 *E.* 3. *cap.* 8. 38 *E.* 3. *cap.* 12.

21 H. 6. 54. Exception was taken for want of the words (*grave dannum*, &c.) and diſallowed, being a popular Action.

Writ of Champerty.

THE Writ of Champerty lieth, where a man by Covenant or agreement made by writings or by word, agreeth to have parcel of the thing or land, or debt which is in ſuit, that ſhall be recovered, if he do recover to maintain and aid him in the action, and in the matter for which he ſueth. Then he who is grieved ſhall have this action againſt him who maintaineth the ſuit for the ſame intent; and the writ is ſuch:

47 E. 3. 9. [172]

Rex Juſtic. ſuis de banco ſalutem, Cum inter cæteros articulos quos Domin. E. nuper Rex Angl', &c. ad emendac. ſtatus populi regni ſui conceſſ. ordinat. ſit, quod nullus miniſt. ſuus, nec aliquis alius pro parte rei quæ eſt in placito habenda, negotia quæ ſunt in placit. ſibi aſſumit manutenend. nec aliquis jus ſuum ſub hujuſm. convent. alteri dimittat; ac L. *placit. loquela quæ eſt coram vobis per breve noſtrum inter* A. *petent. &* B. *tenent. de uno meſ. cum pertinent. in* I. *pro parte ejuſdem habend. jam aſſumperit manutenend. contra form. ordinat. prad. ut accepim. nos ordinat. illam volent. inviolabil. obſerv. vobis mandam. qd. inſpecto tenor. ordinat. prad. ulterius inde fieri fac. qd. de jure & ſecund. form. ordinat. prad. fuerit faciend. Teſte, &c.*

And upon that the Juſtices ſhall award an Attachment againſt the party out of the Common Pleas, *&c.* returnable at a certain day.

And this ſuit ſhall be ſaid the King's ſuit: but yet the party may ſue an Original writ out of the Chancery againſt him who purchaſeth parcel of the Land depending the Plea, *&c.* And the Statute which giveth the action, is the Statute of *Articuli ſuper Chartas*, cap. 11. which willeth that no Miniſter or other for part of the things which are in Plea, take upon him any matter which is in ſuit; nor none upon any ſuch Covenant ſhall give up his Right, and if any do ſo, and

and be attainted thereof, there ſhall be forfeit unto the King ſo much of his Lands and Goods of the taker as doth amount unto the value of the part he hath purchaſed by ſuch taking upon him.

And by thoſe words it ſeemeth that he who leaſeth his Land pendant the ſuit, or giveth parcel thereof pendant the Plea, to the intent aforeſaid, ſhall be puniſhed as well as he who is the purchaſor. 30 Aſſ. 5. Br. Champerty 7.

D *Anno* 30 *E.* 3. *Lib. Aſſ.* It is no Plea, to ſay he did not purchaſe pendant the Plea; by which it ſeemeth if he purchaſe before the writ ſued to maintain, *&c.* that he ſhall be puniſhed, *&c.* by the Statute, *tamen Quære.* For 19 *R.* it is holden by all the Court, that if a man bargain for any lands by deed, and afterward an action is brought for the ſame land, and afterwards pendant the Plea he maketh eſtate to him, to whom he made the bargain, that it is not Champerty. Br. Champ. 7. Fits 11. Fits Cham. 15. 9 H. 7. 18. ac. Plow. Com. 465. acc.

E A Surrender made by him in the Reverſion pendant the Plea is not Champerty. 17 E. 2. Champ. 14.

F And if a man purchaſe land *bona fide* pendant the Writ, and not to maintain, it is not Champerty. 50 Aſſ. 3. Br. Champ. 8.

G And a Diſſeiſor in an Aſſiſe ſhall have a writ of Champerty, if the Diſſeiſee grant part of the land by Covenant to maintain, *&c.* 22 E. 3. 10. Br. Cham. 4. 47 E. 3. 9. 6 E. 3. 3. Fits Champ. 10.

H And a man may give to his Son in Frankmarriage or for life, and it ſhall not be ſaid Champerty, for the Statute in the end thereof is in ſuch manner. But that is not to be intended, That a man may not give Counſel Fees for their pleading.

I And in a Writ of Champerty, 17 *E.* 2. where the writ did abate for falſe Latin; the Defendant was put to anſwer the King's ſuit for the ſame matter.

K And if a man grant a Rent out of the land, pendant the ſuit for the land, the ſame is Champerty, although that that Rent is not as a demand, *&c.*

L And Champerty lieth as well upon Covenant made by word, *&c.* as if it were made in writing to have parcel of the thing, *&c.*

M And if the Covenant be to have a Rent out of the land of another which is not in ſuit; it is not Champerty. But if he do maintain, *&c.* he ſhall have a writ of Maintenance againſt him for the ſame, but not a writ of Champerty.

N And if the Officers of the Court do maintain any Plea pleaded in their Court to have part of the ſame or other profit by the recovery in that action, the party grieved ſhall have ſuch a writ.

Rex

Rex Vic', &c. *Si* R. *&* M. *uxor ejus fecer.* &c. *tunc pone*, &c. I. *&* W. *ball. civitat. noſtræ* Winton. W *&* W. *qd. ſint coram Juſtic.* &c. *oſtenſ. quare cum de communi conſil. regni noſtr. proviſum ſit, qd. nullus miniſter noſter vel aliquis alius manutenea placita, querel. vel negotia, quæ ſunt in Curiis noſtris, vel aliis de terris & tenementis, aut aliis rebus quibuſcunq; pro parte rei petit vel alio profictu, per convent. fac inde habend. nec aliquis jus ſuum ſub hujuſmodi convent. alteri dimittat, prad.* I. *&* W. W. *&* W. *quoddam placit. friſcæ forc. qd. eſt coram Major. & diſt. ball. civitat. prad. inter* S. *&* A. *uxor. ejus petent. & præf.* R. *&* M. *tenentes de uno meſ. cum pertin. in civitat. prad. pro parte tenementi prad. & alio profictu inde habend. per conventionem. jam aſſumpſerint pro præf.* S. *&* A. *manutenendis & manutenent, ad grave damnum ipſorum* R. *&* M. *& contra form. Stat. pradict. & habeas*, &c.

Writ upon the Statute; That none be Victualler for the time that he is Mayor, or Sheriff, or head-Officer of a Town or Burrough.

NOte, that by the Statute of *York*, no Victualler ſhall uſe the occupation, to ſell Victual or Wine in groſs or by retail, ſo long as he is in Office in any Town, Borrough or City, to keep the Aſſiſe of Bread and Wine upon forfeiture, *&c.* If a man who is a Victualler be choſen to be Mayor, Sheriff, or other Officer of a Town, Borrough or City, who by reaſon of his Office is to keep the Aſſiſe. By the Statute of 3 *H.* 8. *cap.* 8. it is ordained, that two diſcreet perſons of the ſame Town, *&c.* who are not Victuallers, be choſen and ſworn to aſſiſe the Aſſiſe of Bread, Wine, and Victual during the time that he is in his office, and then after the price aſſeſſed of Wine and Victual, for the time it ſhall be lawfull for him who is choſen Mayor, or Sheriff to ſell wine and victual for the time that he is Officer. But that Statute doth not extend to *London*, *York*, or *Coventry* to ſell or retail wine or victual, but in groſs they may. And by the Statute of 6 *R.* 2. *cap.* 9. That Victuallers be not choſen to the Office of Judge in Towns or Cities, but for want of others, then he ſhall not ſell victuals upon a pain of forfeiture.

But it appeareth by the Statute of 3 *H.* 8. what things he may do.

And if any man in *London*, *York*, or *Coventry*, or other place offend againſt thoſe Statutes, then he who is grieved may

may ſue a Writ directed to the Juſtices of Aſſiſe, commanding them to ſend for the Parties, and to doe Right, &c. Or the party grieved may have an Attachment againſt the Officer, Mayor, Sheriff or Bailiff, who offend contrary to the Statute, to appear before the Juſtices in the King's Bench, or before the King in the Common Pleas, to anſwer the matter. And the form of the Writ unto the Juſtices of Aſſiſe is ſuch:

Rex dilectis & fidelibus ſuis A. *&* B. *Juſtic. ad Aſſiſas in com. tali capiend. aſſign. ſalutem. Cum ad communem utilitatem populi regni noſtri ſtatutum ſit, quod nullus miniſter in civitatibus, nec in burgis, qui ratione officii ſui debeat cuſtodire Aſſ. de vinis, ſeu de victualib. dum ſit intendens hujuſmodi officio, merchandizet de vinis nec de victualibus in groſſo nec in retalliam. At jam* R. *de* B. *nobis dederit intelligi, quod* S. *&* M. *ballivi villæ prad. & quidam alii ballivi in dicta villa de* S. *exiſtant. qui ratione officii ſui hujuſmodi Aſſiſam cuſtodire debent in eadem villa, vina & victualia in groſſo & ad retalliam vendunt, contra formam Statuti prad'. Nos, ſi ita ſit, remedium in hac parte apponi volentes: Vobis mandamus: quod auditâ inde querela prad.* R. *& vocatis partibus coram vobis, earumque rationibus hinc inde auditis, & inſpecto tenore Statuti prad. eidem* R. *tam pro nobis quam pro ſeipſo ſuper hoc debitam juſtitiam fieri faciat. prout ſecundum Statutum prad. foret faciend. Teſte,* &c.

D And if the Action be brought upon the Statute of *York*, then he who ſueth the Action ſhall have the third part, and the King ſhall have the reſidue of the Victuals which is forfeited. And alſo the form of the Writ of Attachment is ſuch:

Rex Vic' Ebor. *ſalutem. Pone,* &c. P. *de* T. *de* Richmond. *nuper ball. vill.* Richmond. *quod ſit coram nobis,* &c. *oſtenſ. quare cum ad communem utilitatem regni noſtri* Angliæ *de communi conſilio ejuſdem regni concordat. ſit, quod nullus miniſter,* &c. *ad retalliam ſub foriſfactura eorundem; prad.* P. *dum ball. dictæ villæ de* Richmond. *extitit. de vinis & aliis victualibus diverſis ad valenciam centum librarum in prædict. villa* Richmond. *tam in groſſo quam in retallia pluries merchandizavit, & ea ibidem vendidit, ut dicitur, in noſtri contemptum manifeſtum, & dicti populi noſtri grave damnum, ac contra formam ordinationis ſupradict. & habeas,* &c. *Teſte,* &c.

Writ upon the Statute of Articuli Cleri, *that he do not diſtrain in the Glebe of Parſons; nor in the King's High-way.*

THE Writ that no diſtreſs be taken in the Glebe-land of the Parſon by the Sheriff or other Officer is grounded upon the Statute of *Articuli Cleri*, cap. 6. By which Statute it appeareth that the Sheriff, nor other Officer ſhall not diſtrain in the King's high-way, nor in the Glebes of ancient times given to Rectories, and if any Sheriff or other perſon do contrary, then he who is diſtrained may ſue this Writ. E

See Marlb. cap. 55. Vc. 17 E. 3. 43. Fitz. Reſcous 14. the part may Reſcous.

And if a Lay-perſon be diſtrained in the King's high-way, *&c.* he ſhall have an action upon the Statute of *Marlebridge*. But a Spiritual perſon ſhall have his action upon this Statute. But by the Statute of *Marlebridge* the King's Officers may diſtrain in the high-way. And after the Writ delivered to the Sheriff, if he be diſtrained again he ſhall have an *Alias* and *Pluries*, and thereupon an Attachment. And this Writ is in it ſelf a Prohibition to the Sheriff; and the Writ is ſuch:

Rex Vic', ſal. Cum in Articulis Prælatorum & Cleri regni noſtri per Dom. Edw. *nuper regem* Angl. *avum noſtrum, de aſſenſu procerum & magnatum regni noſtri conceſſ. contineatur, quod diſtrictiones non fiant ſuper Rectores per Vic. aut alios miniſtros noſtros in via regia, aut in feodis quibus olim Eccleſ. ſint dotat. ac jam ex gravi querela dilecti nobis in Chriſto Abbatis de Valle regali perſonæ Eccl. de* K. *intellexerimus, quod tu colore officii tui terras & tenementa quæ ſunt de dote & feodo ejuſdem Eccleſ. apud* K. *nuper ingreſſus fuiſti, & præfatum Abbatem in terris & tenementis prædict. graviter diſtrinxiſti, & inde diſtringere non deſiſtis, in ipſius Abbatis præjudicium & libertatis Eccleſiaſticæ læſion. manifeſtam, & contra formam articulorum prad': Nos libertates eccleſiaſticas illæſas obſervare volentes: Tibi præcipimus, quod diſtrictiones aliquas in* [174] *terris & tenementis quæ ſunt de dote prædict. Eccleſ. nullatenus facias, nec quicquam quod in libertatis Eccleſiaſticæ læſionem aut enervationem articulorum præd. cedere valeat attemptetis, & diſtrictionem ſi quam præſat. Abbati in feod. Eccleſ. ſuæ præd. ut prædictum eſt, feceris, ſine dilatione relaxes eidem. Teſte, &c.*

And it ſeemeth, That the party who is diſtrained in the A King's high-way, or the Parſon in the Glebe of his Church ſhall have an Attachment againſt the Sheriff, or other who diſtrained,

diſtrained, although they never ſued out before this Writ of Prohibition to the Sheriff; becauſe that the Statute is a Prohibition it ſelf to the Sheriff, &c.

B And by the Statute of *Articuli ſuper Chartas*, cap. 12. The Sheriff ought not to make exceſſive diſtreſs for the King's debt, nor diſtrain the plough Cattel if he can find others. And if the party will find Sureties to the Sheriff to pay the King's debt before the day of the return of the Writ, the Sheriff ought to deliver back the Cattel. And if the Sheriff doe otherwiſe than is expreſſed in the ſaid Stature, the party upon that Statute ſhall have Attachment againſt him, Or he may ſue forth a Writ to inhibit the Sheriff that he do not diſtrain contrary to the form of the Statute, and the Writ is ſuch:

Rex Vic. Derb. *ſalutem. Cum inter cæteros articul. quos celebris memoriæ Dom.* Edw. *quondam Rex* Angl. *avus noſter, ad emendac. ſtatus populi regni ſui ordinavit, contineatur, quod nimis graves diſtrict. non capiantur pro debitis noſtris, Et ſi debitor poſſit invenire ſufficient. ſecuritat. pro debit. ill. uſque ad unum diem infra diem Vic. quod diſtrict. hujuſmodi interim relaxetur: Tibi præcipim. quod ſi* I. *de* W. *invener. tibi ſufficient. ſecuritat. de reſpond. nobis ad proxim. proferum tuum de centum ſolid. per quos finem fec. nobis coram Juſtic. noſtris de banco pro licenc. concord. in uno brevi de conventione, & quos ab ipſo per ſum. Scaccar. noſtri exigis, ut dic. tunc diſtrictioni quam eidem* W. *facis occaſione præditt. interim ſuperſed. per ſecuritatem ſupradictam, & habeas ibi hoc breve. Teſte,* &c.

And there is another form of Writ in ſuch caſe, thus:

Rex Vic', &c. *quod minus gravis diſtrictio non capiatur pro debito noſtro, nec nimis remot. ducatur. Et ſi debitor invenire poſſit ſufficient. & competent. ſecuritat. de debito illo uſque ad unum diem infra diem Vic. infra quem debitor ſibi inde remedium acquirere valeat, vel alias de debito illo ſatisfact. quod diſtrict. hujuſmodi interim relaxetur: Tibi præcipimus quod ſi* I. *de* T. *quem pro octo ſolid. nobis ſolvend. de exitibus ſuis coram nobis, & alibi coram Juſtic. noſtris ſorisfact. virtute ſum. Scaccarii noſtri tibi direct. diſtringis, ut dic. invenerit tibi ſufficient. ſecuritat. juxta formam articulorum prad. pro debito prad. uſque ad unum diem infra diem tuum ad quem tu teneris inde computar. tunc diſtrictionem, ſi quam eidem* I. *occaſione præmiſſ. fieri feceris interim relaxes eidem pro ſecuritate ſupradicta. Teſte,* &c.

Writ for to ſeiſe the Land of the Wife which ſhe holdeth in Dower, who marrieth her ſelf without Licence.

See after 263, 264, 265.

NOte, That if the Tenant holdeth of the King *in Capite* C and dieth, *&c.* his wife ought not to marry her ſelf again without the Licence of the King; and if ſhe doth, then the King may ſeiſe thoſe Lands which ſhe holdeth in Dower, untill ſhe have paid a Fine to the King, which is commonly one years value of the Land which ſhe holdeth in Dower; and that is by the Statute of *Prærog. Regis*, c. 3. But it appears by the Regiſter, That the King ought to ſeiſe as well the Land of the Husband, as the Land of the Wife which ſhe holdeth in Dower.

Stamford 9 it is not Law.

And by the ſame reaſon, If the Wife have other Lands of her own Inheritance, beſides the Land which ſhe holdeth in Dower; that the King may ſeiſe that Land alſo; And the Writ in the Regiſter for to ſeiſe the Land, is ſuch:

Rex Eſcheatori ſuo, Quia Margarita, *quæ fuit uxor* Edmundi *Baron.* Staff. *defuncti, qui de nobis tenuit in Capite, ſe ſine Licencia noſtra aut dilecti & fidelis noſtri* Radulphi Baſſet, *cui id quod ad nos pertinuit de maritagio præd. conceſſimus,* Thomæ *de* P. *maritavit, ſicut ex querela ipſius* Radulphi *accepimus: Vobis mandamus, quod ſi ita eſt, tunc omnes terras & tenementa, tam ipſius* Thomæ *quam prædict.* M. *in balliva veſtra ſine dilatione cap. in manum noſtram, & ea ſalvo cuſtodire fac. donec aliud à nobis inde habueritis in mandatis. Teſte,* &c. *per conſ.*

But now by the Statute of 32 H. 8. cap. 46. the compoſition is given to the Maſter of the Wards with three of the Counſil of that Court: So they may tax a Reaſonable Fine at their diſcretion, according to the Statute of *Prærogativa Regis*, Stamford 19. acc.

And it appeareth by that Writ, that the King may grant D the Marriages of his Widows, as well as of his Wards; and that the woman may agree with him to whom the marriage is granted, and by his aſſent or Licence if ſhe marry, it ſeemeth ſhe ſhall not pay a Fine. And if ſhe marrieth without Licence, then he who marrieth her doth the King or his Grantee wrong, and that wrong ſeemeth to be the cauſe, That the King ſhall ſeiſe the land of him who marrieth the King's Widow without Licence.

And it appeareth by the Regiſter, That the ſaid *Thomas P.* may agree with the ſaid *Ralph Baſſet*, for which the King ſhall

ſhall receive his ſeiſure; as appeareth, *Rotulo Clerum Anno 8 E. 2.* But yet I conceive, That the King ought not to ſeiſe but onely the Lands which the woman holdeth in Dower, becauſe the Statute giveth no more but that he ſhall ſeiſe that which he holdeth in Dower; for if ſhe will not claim nor ſue for Dower, it ſeemeth ſhe ſhall not be fined, nor none of her Land ſeiſed; And alſo, I conceive, That the King cannot grant the Marriage of his Widows as he may do of his Wards; for if ſhe will live ſingle and not marry, ſhe may ſo doe and ſhall not pay any fine. *Ideo Quære.*

If the get Dower at the hands of the heir, or of the Committee without Oath. *Quære* whether ſhe may marry without Licence. *Stamford* 19. No, becauſe preſently upon the aſſignment ſhe is Tenant to the King, and not to the Heir.

Stamford, *Prærog.* 12. 40 *Aſſ.* 36. The King's Widow had Dower without aſſignment. Ve. *Stamford* 18.

Writ upon the Statute de Anno primo E. 3. c. 12, & 13. *where the King's Tenant alieneth without Licence.*

A NOte, where the King's Tenant who holdeth of the King in chief as of his Crown alieneth the Land which he ſo holdeth of him for life, or in trial, or in fee, without the King's Licence, Then the King ought for to ſeiſe the Land for a Fine, *&c.* But if a man holdeth of the King as of any Honour, or Caſtle, or Manor being in his hands, which he hath by deſcent from any Collateral Anceſtor, and the Tenant doth alien as above his Lands without Licence granted him by the King; Then if the Sheriff or Eſcheator will diſtrain or diſturb the poſſeſſion of the Alienee, he ſhall have a Writ upon the Statute of 1 *E.* 3. *cap.* 13. which ſhall be ſuch:

Rex Eſcheator. ſuo ultra Trent. *vel Eſcheatori ſuo in Com.* S. *ſalutem. Cum de communi conſilio regni noſtri ſtatutum ſit, Ne quis occaſione acquiſitionis terrarum ſeu tenementorum, quæ de nobis ut de honoribus tenentur in Capite, licenc. progenitorum noſtrorum quondam Regum* Angliæ, *ſeu noſtra ſuper hoc non obtenta fac. occaſionentur: Vobis mandamus, quod* R. *filium* I. *de* C. *Capellanum occaſione acquiſition. quam tempore Domini* Edwardi *nuper Reg.* Angliæ, *fec.* Robert. *de* Saumby *Milit. de una bovat. terr. cum pertin. in* E. *quæ de nobis ut de honore de* T. *tenent. in Capite ut dic. ſi de nobis ſic teneant non occaſionetis contra formam ſtatut. ſupradict. Teſte,* &c.

And upon that he ſhall ſue an *Alias* and *Pluries, vel cauſam nobis ſignifices*, &c. And thereupon an Attachment againſt the Eſcheator or Sheriff if they diſtrain or diſturb him after that Writ directed unto them, if the lands be holden as above is ſaid. But it appeareth by that Writ, That a man may hold of the King *in Capite*, as of an Honour, but the ſame is againſt the Regiſter in the beginning of the Regiſter; as appeareth by the *Præcipe in Capite*: But the uſe at this day is to take a Fine of him who holdeth of the King of any Honour, which is the Ancient Inheritance of the King, who alieneth his land without Licence; But *Quære* what in Right ought to be done in that caſe.

Writ quod Clerici non eligantur in Officio Ballivi, &c. pro terris ſuis.

IF a man who holdeth certain Lands or Tenements by B reaſon of his ſaid Lands ought to be choſen Bailiff, or Beadle, or Reeve, or in ſuch like Office for his Lands; If ſuch a man be made a Clerk, or is within holy Orders, Then he ought not to be choſen into ſuch Office for his Lands, And if he be elected to ſuch Office of Bailiff or Beadle, &c. he ſhall have a Writ to diſcharge him, which ſhall be ſuch;

Rex Ballivis I. *de* L. *ſalutem. Cum ſecundum legem & conſuetudinem regni noſtri* Angliæ *Clerici infra ſacros ordines conſtituti, ad officium Ballivi ſeu Bedelli eligi non debeant, nec hactenus conſuever. ac jam ex parte* T. *de* M. *Magiſtri Hoſpitalis noſtri de* C. *capellani acceperimus, quod vos ipſum Magiſtrum ad Officium Ballivi ſeu Bedelli manerii prædicti. elegiſtis jam de novo, & ipſum Officium illud aſſumere compellere nitimini, in ipſius Magiſtri grave damnum, & contra legem & conſuetudinem ſupradictam: Super quo nobis ſupplicavit, ſibi per nos de remedio provideri, & quia non eſt juri conſonum, quod dictus Magiſter, qui nobis in Hoſpitali prædicto pro ſalubri ſtatu noſtro, & pro animabus progenitorum noſtrorum quondam Regum Angliæ, & pro ſtatu eiuſdem Hoſpitalis ac Cantariis, Eleemoſynis, & aliis piis operibus in eodem Hoſpitali manutenendum & ſuſtentandum continue deſervit ad deſiſtendum alibi extra* [176] *idem Hoſpital. in ſeculuribus negotiis compellat. Vobis præcipimus, quod diſtrictioni & compulſioni ſi quas eidem Magiſtro ad Officium Ballivi ſeu Bedelli in Manerio prædicto aſſumend. feceritis, omnino ſuperſedeatis, & eas ſine dilatione relaxetis, & denarios ſi quos per amerciamenta, vel alio modo ex cauſa*

prædicta

prædicta ab eo levaveritis, eidem Magiſtro reſtitui fac. indilat. ſub periculo quod incumbit. Teſte, &c. And he may have an *Alias* and a *Pluries*, and Attachment upon the ſame.

Writ that Parſons, nor Prebendaries ſhould not be charged for their Goods in their poſſeſſions to Fifteens, which are annexed to their Prebends.

A THE Writ for Prebendaries, or other ſpiritual perſons to be diſcharged for their goods of the Benefice in their poſſeſſions lieth; Where the Sheriff or Collectors of the Fifteens will diſtrain the Parſons or Prebendaries in their ſpiritual poſſeſſions by their goods being in their poſſeſſions to be Contributories to the payment of Taxes or Fifteens granted, *&c.* And if they be diſtrained, they ſhall have ſuch Writ:

Rex Taxatoribus decimæ & xv. nobis ultimo per communitatem regni noſtri Angliæ *conceſſarum in Com.* Gloceſtr. *ſalutem. Ex parte* W. *Prabendarii Prabendæ de* B. *in Eccleſ. de* S. *nobis eſt oſtenſ. quod cum vos occaſione* x. *&* xv. *prædictar. nobis per laicos conceſſar. in propriis bonis ipſius* W. *de temporalibus Prabend. ſuæ prædict. annis exeuntibus, quæ ad decimam inter ſpiritualia in ſingulis taxationibus, præſtationibus, hujuſmodi decimæ taxantur, & de quibus decimis dari conſuevit prædictam decimam, & quindecimam inter laicos aſſidere, taxar. & levare intenditis minus juſte, in ipſius* W. *damnum non modicum & gravamen. Et quia nolumus quod idem* W. *de hujuſmodi bonis ſuis, de quibus decimam nobis dat inter ſpiritualia de prædict. decim. & quindecima per laicos conceſſ. oneret. Vobis mandamus, quod ipſum* W. *in propriis bonis ſuis, quæ inter ſpiritualia ad decimam taxantur, & de quibus decimam nobis dat, ut prædictum eſt, ratione decimæ & quindecimæ prædict. nobis per laicos conceſſæ non moleſtetis in aliquo ſeu gravetis, & diſtriction. ſi quam ei ea occaſione fieri feceritis, ſine dilatione relaxar. fac. eidem. Proviſo quod de terris & tenementis, ſi quæ per præd.* W. *vel prædeceſſores ſuos ad prædict. prabend. poſt Annum Domini* Edwardi *quondam Regis* Angliæ *avi noſtri viceſimum, acquiſita fuerint, nobis de hujuſmodi decima & quindecima juxta bonorum & catallorum in dictis terris & tenementis exiſtent, & de eiſdem provenient. reſpondeat. ut eſt juſtum. Teſte*, &c. And upon that he ſhall have an *Alias*, *Pluris* and *Attachment*.

Writs directed to make Proclamation, that none cast Filth or Dung into Ditches or Rivers, near Cities or Boroughs, made Anno 12 R. 2. cap. 13.

IF any one cast any dung, filth or intrails of Cattel into Ditches, Waters, or other places which are next to any City, Borough or Town, he who will may sue forth a Writ directed unto the Mayor, or Sheriff, or Bailiff of such Town, *&c.* That they make Proclamation that none so doe, and that those that have so done, that they cause to remove and carry away the same from thence; And this Writ is founded upon the Statute of 12 *R.* 2. *cap.* 13. and the Writ is such:

Rex Ballivis suis Vill. de Novo Castro *super* Tinam *salutem. Cum in statuto in Parliamento nostro apud* Canterb. *Anno regni nostri* 12 *tento, edito, inter alia contineat. quod proclamat. fieret, tam in Civitate* Lond. *quam in aliis Civitatibus, Burg. Villis, & eorum suburbiis ubi necesse foret, tam infra libertates quam extra, quod omnes illi qui fimos, exitus, intestina, aut alia fetida jactaverant seu posuerant in fossatis, ripariis, aquis, & aliis locis infra, circa, & prope diversas Civitates, Burgos, & Villas regni nostri* Angliæ, *& Suburb. eorundem, ea totaliter amoverent & asportarent ante festum, &c. sub pœna* XX l. *nobis solvend'. Et quod Majores & Ballivi de qualibet Civitate, Burg. & Villa & etiam Ballivi libertatum eos compellerent ad hoc faciendum, sub pœna consimili. Et insuper, quod proclamat. fieret tam in dicta Civitate* Lond. *quam in aliis Civitatibus, Burgis, Villis, & aliis locis superius nominatis, quod nullus cujuscunque conditionis foret, hujusmodi nociva, exitus, fimos, intestina, & fetida in fossatis, ripariis, aquis, & locis supradictis extunc jactaret sive poneret. Et si quis hoc fecerit, vocetur coram Cancell. per breve ad sectam illius qui se inde conqueri voluerit, & si inventus foret inde culpabilis, puniatur secundum discretionem Cancellar. prout in statuto prædicto plenius continetur. Jamque ex parte dilectorum nobis in Christo Prioris & fratrum Ordinis Heremitarum S.* Augustini *dictæ Vill. de* Novo Castro *super* Tinam *intellexerimus, quod quamplures homines ejusdem Villæ, fimos, exitus, intestina, & alia fetida in quadam via qua se ducit prope mansion. prædict. Prioris & fratrum in eadem Vill. jactaverunt & posuerunt; in ipsorum Prioris & fratrum, ac aliorum conversant. & transeuntium ibidem nocument. & Vill. suæ*

periculum

periculum manifeſtum & contra formam ſtatuti prædict. Nos volent. ſtat illud inviolabiliter obſervari, vobis præcipimus, ſtrictius injungentes quod in Vill. prædict. ex parte noſtra proclamat. fac. ne quis, cujuſcunque conditionis fuerit, aliqua nociva, exit. fimos, inteſtina, ſeu fetida quæcunque in via prædict. jaſſet ſeu ponat. Et quod omnes, & ſinguli qui hujuſmodi nociva ibidem jaſtaverint ſeu poſuerint, ea ſine dilatione amoveant & aſportent juxta formam ſtatut. prad. Teſte, &c.

And it ſeemeth, That the Chancellor may award a *Pone* againſt him, or an Attachment to make him come before him in the Chancery; and there puniſh him according to his diſcretion. And it ſeemeth that he who is grieved by that *Nuſance*, may have an Action upon the Statute againſt him who did the *Nuſance*, and recover damages for the Nuſance done to him, *tamen Quare.*

But by the Common Law, if a man doth any thing to the annoyance of my Freehold, or of my Land in which I have an eſtate for years, I ſhall have my Action upon the Caſe for the ſame, or a Writ of *Nuſance* if it be annoyance unto my Freehold.

Writ of Aſſiſe of Novel Diſſeiſin.

A THE Writ of *Aſſiſe of Novel Diſſeiſin* lieth where Tenant for life, or Tenant in Feeſimple, or in tail is diſſeiſed of his Land or Tenements, or put out thereof againſt his will, that is a Diſſeiſin; and he ſhall have an Aſſiſe of *Novel Diſſeiſin* of that ouſter, *&c.*

B And the Rule in the Regiſter is, That if a man will bring an Aſſiſe of *Novel Diſſeiſin* of Lands in the County where the Common Pleas is; That then the Aſſiſe ſhall be brought in the Common Pleas: and if the Common Pleas be in one County, and the King's Bench in another County, if the *Aſſiſe* ſhall be brought of Lands in the County where the King's Bench is, Then the *Aſſiſe* ſhall be brought and returnable in the King's Bench: and if both the Benches be in one County, the uſage is to bring the *Aſſiſe* in the Common Pleas or King's Bench at pleaſure; but that, as I think, is againſt the Rule of the Regiſter.

C And the *Aſſiſe* of *Mortdauncеſtor* ſhall be brought in the like manner, as the *Aſſiſe of Novel Diſſeiſin* ſhall be before the Juſtices of the Common Pleas, or King's Bench; and in the *Aſſiſe* a day certain ſhall be put thus; *Uſque in diem Jovis*

See before 109. acc. in Attainr. Ve. 7. Aſſ. 7. Br. Aſſiſe 120.

Jovis poſt Quindenam, &c. But in *Aſſiſe* of *Mortdaunceſtur* the common day ſhall be *in Quindena*, &c. *vel in octabis*, &c. as in other pleas.

And in an Aſſiſe of *Novel Diſſeiſin* in the Common Pleas, or in the King's Bench, the Juſtices may give day out of Term, thus, *Uſque ad diem Jovis proxime poſt feſtum S. Luciæ &c.* becauſe that the Aſſiſe hath not any day of Return in the Term, but day certain which the Juſtices will give, and that may be as well out of Term as in Term. And by the Statute of *Articuli ſuper chartas*, in every Writ of Summons and Attachment there ought to be fifteen daies betwixt the day and the return thereof; but in Aſſiſe of *Novel Diſſeiſin* in the Common Pleas, or in the King's Bench, there needeth not be fifteen daies between the date and return thereof, as it ſeemeth by the Statute.

30 Aſſ. 44. B. Aſſiſe 316. for their Patent ought to be dated fifteen daies before the day.

And in an Aſſiſe of *Novel Diſſeiſin* ſued before Juſtices in Eyre, or before Juſtices of the King's Bench, or Common Pleas, the Plaintiff ought not to have any Patent to the Juſtices, for they have authority without a Patent; And ſo have Juſtices of Aſſiſe authority to take Aſſiſes of *Novel Diſſeiſin* without any Patent made unto them by the Statute of *Weſt.* 2. *cap.* 13. but then the form of the Writ is ſuch:

29 Aſſ. 40. Br. Aſſiſe 300.

Rex Vic. &c. *Queſtus eſt nobis* A. *quod* B. *injuſte & ſine judicio diſſeiſ. eum de libero tenemento ſuo in* C. *poſt primam tranſfetr. Domini* H. *Regis filii in* L. *in* Vaſcon. *& ideo tibi præcipimus, quod ſi prædict* A. *fecerit te ſecur. de clamore ſuo proſequend. tunc facias tenement. illud reſeiſiri de catal. quod in ipſo capta fuer. & ipſum tenementum cum catal. eſſe in pace, uſque ad primam aſſiſam cum Juſt. noſtri in partes illas venerint, & interim fac.* 12. *liberos & legales homines de Viſn. illo. vider. tenement. illud, & nomina illorum imbreviari, & ſum. eos per bonos ſum. quod ſint coram præfat. Juſt. ad præfat. aſſ. parati inde facer. recognit. & pone per vad. & ſalvos pledg. prad.* B. *vel ballivum ſuum ſi ipſe inventus non fuerit, quod tunc ſit ibi ad aud. ill. recogn'*, &c. *& habeas ibi ſum. nomina pleg. & hoc breve.*

Which proves, that the Bailiff is party *quodammodo.*

And if the Writ of Aſſiſe be brought before other Juſtices than before the Juſtices of Aſſiſe in the ſame County, Then the Writ ſhall be in another form, which is ſuch:

Ve. 7. Aſſ. 12. Br. Aſſiſe 122.

Rex Vic', &c. *Queſti ſunt nobis* A. *& uxor ejus quod* C. *injuſte*, &c. *diſſeivit eos, vel præfat.* B. *de libero tenemento ſuo in* N. *Et ideo tibi præcipimus, quod ſi prædict.* A. *&* B. *fecerit*, &c. *in pace uſque ad certum diem quem dilecti & fideles*

fideles noſtri R. *& F. tibi ſcire fac. & interim*, &c. *& ſum.* &c. *quod tunc ſint coram præfat.* R. *& F. & his quos ſibi aſſociaverimus ad certum locum quem idem* R. *& F. tibi ſciri fac. parati inde facere recognitionem. Et pone*, &c.

I And upon that writ they ought to have a ſpecial Patent directed to the ſame Juſtices, becauſe they are not the Juſtices of Aſſiſe of that County, and the Patent ſhall be ſuch:

K *Rex dilectis & fidelibus ſuis* R. *& F. ſalutem. Sciatis quod conſtituimus vos Juſt. noſtros una cum his quos vobis aſſociaverimus ad aſſ. Novel diſſ. capiend. quam* A. *& B. uxor ejus arrain. coram vobis per breve noſtrum verſus* C. *de tenementis in* N. *& ideo vobis mandamus, quod ad certos diem & locum quos ad hoc provideritis aſſ. illam capiatis factur. inde quod ad Juſt. pertinet ſecundum legem & conſuetudinem regni noſtri, ſalvis nobis amerciamentis inde provenientibus: Mandamus enim Vic. noſtro* Linc. *quod ad certos diem & locum quos ei ſcire fac. aſſ. illam coram vobis venire fac. In cujus rei teſtimon. has literas noſtras fieri fecimus patentes, Teſte*, &c.

A' And if the Writ aforeſaid be directed to the Sheriff, and thoſe who are aſſigned by the Writ to be Juſtices of that Aſſiſe, be the Juſtices of Aſſiſe in the ſame County, then it ſeemeth the party needeth not to have a ſpecial Patent to them for that Aſſiſe; for their general Patent to them to take all Aſſiſes ſhall be ſufficient for that Aſſiſe and all other Aſſiſes: For the Juſtices of Aſſiſe uſe but to make one general Precept for all Aſſiſes according to their general Commiſſion and Patent; and not to make a ſpecial precept for every ſpecial writ directed to the Sheriff, and eſpecial Patent made unto them to take any ſpecial Aſſiſe for ſuch party.

B And if an Aſſiſe be brought in the Common Pleas, or King's Bench, there the form of the writ is:

Queſtus eſt nobis A. *quod* B. *injuſte*, &c. (uſque ibi) *in pace, uſque ad diem Sabbati in Octavis S.* Michael *proxim. futur.* Vel ſic, *Uſque in diem Sabbati proxim. poſt craſtinum animarum proxim. futur. & interim*, &c. *& ſumm'*, &c. *quod*, &c. *coram nobis apud* W. *vel coram Juſtic. noſtris apud* W. *parati inde*, &c.

C And in Aſſiſe when he purchaſeth the Writ, he ought to find ſureties in the Chancery, and then the form of the writ is ſuch:

Rex, &c. *Queſtus eſt nobis* A. *quod injuſte*, &c. *diſſ. eum de libero tenemento ſuo in* N. *poſt primam tranſfretat. Domini* H. *Regis filii* I. *in* Vaſ. *Et quia prædict.* A. *fecit nos ſecur.*

ſecur. de clamore ſuo proſequend. per C. *&* D. *in Com. tuo, tibi præcipimus, quod facias tenementum illud reſeiſiri,* &c. ut ſupra.

And another form of the Writ againſt a body corporate, thus:

Queſtus eſt nobis A. *quod* B. *Major. Civitatis* C. *& communitas ejuſdem Civitat. injuſte,* &c. Vel ſic, *Queſtus eſt nobis* A. *quod* I. *Abbas beatæ* Mariæ Ebor. *& frat.* P. *de* C. *commonachus ejuſdem Abbatis & frat.* I. *de* P. *converſus ejuſdem domus injuſte,* &c. Vel ſic, *Queſtus eſt nobis* C. *Capellanus Cantariæ in Eccleſ. de* N. *quod* B. *injuſte,* &c.

If a man have a rent ſervice, or a rent charge, or rent ſeck, iſſuing of Land for life, in tail or in fee, if he be diſſeiſed of the rent, he ſhall have an Aſſiſe, and the Writ ſhall be general; *quod injuſte,* &c. *diſſeiſivit eum de libero tenemento ſuo in* N. and ſhall make his title to the rent.

And the Rule in the Regiſter is, That when a man is diſſeiſed of a rent charge, or of a rent ſeck, it behoveth that all the Tenants of the Tenements charged, be named in the Writ of Aſſiſe, and all the land put in view, although he were diſſeiſed but by one Tenant onely, but it is otherwiſe of a rent ſervice.

And in an Aſſiſe of *Novel diſſ.* a man ſhall not vouch any one, unleſs he be named in the Writ, and preſent when he is vouched, and would preſently enter into the warranty, and warrant the land, *&c.*

But in an Aſſiſe of *Mortdaunceſtor*, he may vouch at large. And a man ſhall have an Aſſiſe of *Novel Diſſeiſin* of an Office if he have the ſame for life; and the Writ ſhall be, *Quod diſſeiſivit eum de libero tenemento ſuo in* D. and he ſhall make his plaint of the office, and ſhew his title in the plaint.

6 Aſſ. 12. Br. Aſſiſe 145. And ſo if a man have any profit granted unto him out of land for life, or in Fee, as to have the fruit of apples, nuts, acorns, or other profits whatſoever, he ſhall have an Aſſiſe of them if he be diſſeiſed of them, as appeareth by the Statute of *Weſt.* 2. *cap.* 25.

And ſo of Toll, Tonnage, Paſſage, Pontage, Pannage, and other like. And if Tenant by Statute Merchant, or by Statute Staple be diſſeiſed of any Lands which they have in execution until their debts be levied, they ſhall have an Aſſiſe of *Novel Diſſ.* and recover their term; and yet they ſhall have but a Chattel, *ſcil.* the land for the certain term of years, but that is by reaſon of Statutes thereof made.

And

And ſo he ſhall have an Aſſiſe, *&c.* of the land which he hath in execution by *Elegit*, if he be deforced thereof by the Statute of *Weſt.* 2. *cap.* 18.

H And by the Statute of *Weſt.* 2. *cap.* 25. Aſſiſe is given if one with his cattel do eat the ſeveral paſture of another, the other may have an Aſſiſe of the paſture, and wave the poſſeſſion, although the other do not claim the freehold of the land.

I And ſo if the Lord, or other man who hath a rent iſſuing out of the lands, do often diſtrain for the rent or ſervice where none is behind, the Tenant may have an Aſſiſe for this diſtreſs by the Common Law. And that Aſſiſe lieth between the Lord and the Tenant, or between the Lord paramount, and the Tenant paravail, as appeareth 27 *Aſſ.* 51. But it ſeemeth reaſonable, that the Tenant have the Aſſiſe of *Sovient faits* diſtrained againſt him who claimeth a rent charge out of land, *tamen quære.* And if a man ſueth divers Aſſiſes againſt one man in ſeveral Towns, or againſt ſeveral men in ſeveral Towns, he may ſue forth a patent to the Juſtices for all thoſe aſſiſes, and the form of the Patent ſhall be ſuch:

27 *Aſſ.* 51. Br. *Aſſ.* 274. 28 *Aſſ.* 30. 6. Br. *Aſſ.* 291.

Rex *dilectis*, &c. *ſalutem. Sciatis quod conſtituim. vos*, &c. *ad Aſſ. Novel Diſſeiſ.* &c. *quam*, &c. *de tenementis in* N. *& ad Aſſiſam Novel Diſſeiſ. capiend. quam idem* A. *&c. coram vobis per aliud breve noſtrum verſus*, &c. *de tenementis.* Et ſic ſi plures fuerint.

[179]

A If a man be ſeiſed of parcel of a Rent which is payable at a day, and afterwards the Tenant will not pay reſidue of the ſame rent which is due at the ſame day, he who ought to have the Rent ſhall have an Aſſiſe of *Novel Diſſeiſin* of the whole Rent, as well of that which he is ſeiſed of as of the reſidue, and that ſeiſin of parcel of the B rent ſhall be to him a ſeiſin of the whole rent. And if a man do diſtrain for his rent pendant an Aſſiſe for the ſame rent, he ſhall abate his Aſſiſe, but if he diſtrain for Homage pendant the Aſſiſe for the rent which is parcel of that ſervice, that ſhall not abate the Aſſiſe, for an Aſſiſe doth not of Homage.

29 *Aſſ.* 29. Br. *Aſſ.* 302. Fitz. 288.

C And ſeiſin of rent by an Abbat ſhall be a ſufficient ſeiſin for the Succeſſor to have aſſiſe of the rent if he be denied the ſame, or reſcous made againſt him, but ſeiſin of reſt of the father ſhall not be ſufficient ſeiſin to the Son, to have an aſſiſe of the rent if reſcous be made unto him of the rent; becauſe that the Abbat hath the rent in the right of his houſe, which houſe continueth, and ſo the ſeiſin of the

Quære if for fervent diſtreſs. 28. *Aſſ.* 30. Br. *Aſſ.* 291.

the predeceſſor is the ſeiſin of the Succeſſor, but the father hath the rent in his own right; and the ſon ſhall have the ſame in his own right; and then he ought to have a new ſeiſin. And a man may have one aſſiſe of ſeveral rents, or of land and rent, and Offices and profits apprender in his ſoil, and all in one Writ. And the Lord Paramount may have Common appendant in the lands of the Tenant Paravail to his lands which he hath by purchaſe; and the Tenant Paravail may improve againſt the Lord Paramount, as well as he may againſt other Commoner or Neighbour, if he leave him ſufficient Common. *Quod vc. M.* 19 *E.* 3. 1. Aſſiſe in the Abridgment.

7 Aſſ. 18. Br. Aſſ. 127. 21 Aſſ. 13. *ibid.* 168. 18 Aſſ. 4. 20. *per Curiam.*

15 H. 7. 10. If there be ſufficient at the time of the improvement, although not after it is not material. Aſſ. 18.

And the ſeiſin of the Guardian, ſhall give ſeiſin to the Ward to have an Aſſiſe if he be diſſeiſed. And ſo of Tenant by Statute Merchant. And ſeiſin by the hands of Tenant for life of lands out of which a rent is iſſuing is a ſufficient ſeiſin to have an Aſſiſe of the rent, if it be afterwards denied.

8 H. 16. 17. 8 Aſſ. 16. aſſiſe 191.

And ſo it ſeemeth payment of the rent by the Tenant for years of the land is a ſufficient ſeiſin to have an Aſſiſe of the rent if ſo it be afterwards denied, *Tamen quære.*

A feme Covert ſhall not be a diſſeiſoreſs of any Land if ſhe do not actually enter, nor ſhall ſhe be a diſſeiſoreſs by the husband's act. And an Infant ſhall not be a diſſeiſor by his commandment. But a man of full age may be diſſeiſor if he command another to enter into land.

If a man recover a rent, the Sheriff may put him in ſeiſin by wood, or by any parcel of the land out of which the rent is iſſuing.

And ſeiſin of rent by a Parſon, or a Chauntry Prieſt which they have in the right of their Church, ſhall be a ſeiſin to their Succeſſors to have an Aſſiſe of the rent, if they be denied the ſame after the death of their predeceſſors as well as of an Abbat, *&c. quod Ve.* 34. *E.* 3. *Lib. Aſſ.*

A man ſhall not be adjudged a diſſeiſor by the act of his Tenant at will, although the Tenant at will do reſcous for rent, *&c.* he ſhall be adjudged the ſole diſſeiſor and not the Tenant of the Freehold; But if the Tenant of the Land pay the rent unto a ſtranger who ought not to have the ſame, that payment is a diſſeiſin to him who ought to have the Rent.

Writ

Writ of Common of Paſture, Turbary or Piſcary.

THE Writ of Aſſiſe of *Novel diſſeiſin*, of Common of Paſture, or of Turbary, or of Piſcary, lieth where a man hath Common of paſture appendant or appurtenant to his Manor or houſe, or Land which he hath for term of life, or in Fee-ſimple, or in Fee-tail, if he be diſturbed of his common, ſo that he cannot take it as he ought to do, he ſhall have an aſſiſe of *Novel diſſeiſin* thereof, and the writ ſhall be ſuch:

Rex Vic', &c. *Queſt. eſt nobis* A. *quod* B. *injuſte*, &c. *diſſeiſivit eum de commun. paſtur. ſua in* N. *qua pertinet ad liber. tenement. ſuum in eidem villa, vel in alia villa poſt primam*, &c. as in aſſiſe of Land. *Et ideo tibi præcipimus, quod ſi prædict.* A. *fecerit te ſecur.* &c. *tunc fac. duod. liberos & legales homines de viſn. illo videre paſturam illam & tenement. & nomina eorum imbreviari: Et ſum.* &c. *coram Juſtic. vel coram nobis*, &c. *die Jovis, proxime poſt craſtin. Octabis*, &c. Vel ſic: *Coram Juſtic. noſtris ad prim. aſſiſ. cum in partes illas venerint*, Vel ſic: *Coram dilectis & fidelibus noſtris* R. *&* F. *& his quos*, &c. ut ſupra.

11 H. 6. 22. The Writ was *de Libero tenemento*, and his plaint of Common of paſture, for which the writ abated.

And if the Common of Paſture or Turbary, or Piſcary be not appendant or appurtenant to any Manor nor Land, nor Tenement, then thoſe words in the Writ *which belong to his franktenement* ſhall be left out in the Writ, and then the writ ſhall be ſuch:

Rex, &c. *Queſtus eſt nobis* A. *quod* B. *injuſte*, &c. *diſſeiſivit eum de comm. paſt. ſuæ in* N. *poſt primam transfretationem*, &c. (uſque ibi) *de vicin. illo videre paſturam illam, & nomina eorum imbreviari*, &c.

As in the Writ of Aſſiſe of Land. And the Patent made unto the Juſtices of the Aſſiſe of Common, is as the Patent made to the Juſtices of Aſſiſe of land, but where it is ſaid in the Patent of aſſiſe of land that place, *de libero tenemento ſuo*, &c. he ſhall ſay in this Patent, *de Communia paſturæ in* N. *&c.*

11 H. 6. 22. per Paſton.

And if a man have Common appendant or appurtenant to his Freehold which is his Manor or Land which is in ſeveral Counties, and he is diſſeited o his Common, then he ſhall have an Aſſiſe in the County where the Common is and another Writ in the County where the Land is, to which the Common is appendant or appurtenant. And if the Land

or

or Common be in one County, and the Land to which the Common is, be in another County, yet the writ ſhall be brought in the County where the Land of which the Common is iſſuing, is, and another Writ in the County where the Land to which the Common is appendant, is. And if the Land be in one County to which the Common is appendant, and the Common be in ſeveral Counties. Then he ſhall have ſeveral writs in the County where the Common is, and where the land is, and the forms of the writ are ſuch.

Queſtus eſt nobis A. *quod* B. *injuſte & ſine judicio diſſeiſivit eum de Communia Paſtur. ſua in* N. *quæ pertinet ad liberum tenem. ſuum in* R. *&* K. *quæ ſunt in confinio Com. tui, & Com.* Linc. *poſt primam transfretat.* &c. Vel ſic, *de Com. paſt. ſua in* N. *in Com. tuo, & Com.* Linc. *quæ pertinet ad liberum tenem. ſuum in* K. *in Com.* &c. Vel ſic, *de Communia paſturæ ſuæ in* R. *&* K. *quæ ſunt in confinio Com tui, & Com.* Linc, *quæ pertinet ad liberum tenem. ſuum in* K. *in prædict. Com.* Linc. *in eodem confinio,* &c.

And upon theſe Writs he may have a Patent directed to certain perſons who ſhall do Juſtice in that aſſiſe upon all the Writs.

Rex dilectis, &c. *Sciatis quod conſtituimus vos Juſtic. noſtros, una cum his quos vobis aſſociavimus ad Aſſ. novæ diſſ. capiend. quam* A. *arrainavit coram vobis per brevia noſtra verſus* B. *de communia paſtur. in* R. *&* K. *quæ ſunt in confinio Com.* N. *&* L. *ideo vobis mandamus, quod ad certos diem & locum in confinio com. prædict. vel in confinio præd. quos ad hoc provideritis aſſiſam illam capiatis, factur.* &c. *Mandamus enim Vic. com. præd. quod ad certos diem & locum in confinio Com. præd. vel in confinio & prædict. quos eis ſcire fac. aſſiſam illam,* &c.

And in like manner he may ſue ſeveral writs of aſſiſe of Common of Turbary, or of Piſcary, or other like profits which are in two Counties, And when a man hath a Rent which is iſſuing out of Land in two Counties, if he be diſſeiſed thereof he ſhall have an aſſiſe as before is ſaid of Common, *viz.* 2. Writs, one Patent as before is ſaid by the Statute 7. *R.* 2. *cap.* 10.

21 H. 6. 9. 10.
7 H. 4. 30
5 E. 4. 2. ac.
20 Aſſ. 5.
Br. Aſſ. 151.

And a man cannot uſe his Common appendant with the Cattel of ſtrangers, unleſs he bring them to ſoil his land: But he cannot agiſt other Cattel there for money, which do not manure his Land.

45 E. 3. 12.
15 E. 4. 32.
Ryot.
6 H. 7. 14.
11 H. 6. 12.
15 E. 4. 32.

The ſame Law where a man hath Common as an Inhabitant he ſhall have it, but for thoſe which are levant and couchant within that Town.

And

And if a man grant Common unto one for his own Cattel, he cannot uſe his Common with the Cattel of a ſtranger. A man preſumed to have Common appendant for all manner of Beaſts, and it was holden it could not be Common appendant for that the ſame is not, but for thoſe Cattel which manure his Lands, 9 E. 4. 3. 37 H. 6. 34. and 14 H. 6. 6. But it is Common appurtenant. Old. N. B. 26.

And ſo if a man preſcribe to have Common for his own Cattel, he cannot uſe Common with other Cattel.

But if a man claim Common for Cattel without number, or to have Common for twenty Cattel, there he may agiſt the Cattel of ſtrangers for money in that Common. 14 H. 8. 2. If a man hath Common ſans number granted, yet the Tenant ſhall have Common for his Cattel, 11 H. 6. 22.

C And a man may claim Common appendant *ratione Meſſuagii*, but it ſeemeth it ſhall be taken that he hath Land lying to his houſe, *&c.* which the Cattel ought to ſoil, *&c. Quare.* 22 H. 6. 42. 27 H. 6. 34. *Admittitur* But Priſot, it cannot be but to arable. 20 H. 6. 4. Halls ac. 5 aſſ. 2. it cannot be but to ancient Land of that and not to Land improved. 20 E. 2. ac. and there the Land to which it may be appendant is called aid and gain.

D None ſhall claim Common by Vicinage but the Lord who hath the poſſeſſion of the Town, 23 H. 6. But yet it ſeeE meth, that one Neighbour may claim Common by Vicinage in the Land of another Neighbour, although he be Lord of the Town, *&c.* And if a man claim Common in certain Lands ſo long as he dwelleth in ſuch a Town to ſuch a Houſe; Or if he claim Common in the Land until the Lands be ſowed, and after the Corn is cut to have Common there again. 7 E. 4. 26. 32 H. 8. Dyer 47. 37 H. 6. 34. ac.

F And if a man be diſſeiſed of the Common appendant or appurtenant to his Land, and afterwards he maketh a Feoffment of the Land to which the Common is appendant or appurtenant, he ſhall not have Aſſiſe of that Common nor other remedy. 10 H. 6. 73. So if he be diſſeiſed of the Land he ſhall not have Common till his entry.

G If a man grant certain Lands to one *Cum Communia in omnibus terris ſuis*, &c. And doth not expreſs any place certain, he ſhall have Common in all his Lands which he had at the time of the grant. 5 H. 7. 7. 26 H. 8. 4. 7 E. 4. 27.

H And if a man have Common of Eſtovers by grant he cannot build new houſes to have Common of Eſtovers for thoſe houſes.

I The Uſer of Common by Tenants at will, ſhall be a ſeiſin to him in the Reverſion to have an Aſſiſe, if he or his Tenant at will be after diſturbed to uſe the Common. 14 H. 6. 64

11 H. 6. 22. 21 H. 7. 7. And *P.* 45 *E.* 3. It appeareth that he who hath Common granted unto him by ſpecialty cannot agiſt other mens Cattel in the Common, but ought for to uſe the Common with his own Cattel, or ſuch Cattel which he hath to occupy his Land with, *&c.* or may manure his Lands with Cows which he alloweth to have the keeping for their Manor: But *Thyrre* ſaid, that if a man grant to me Common for my Cattel, that I may take others Beaſts to give me ſeiſin in my Common, and preſently drive them off again, if he who granteth the Common do agree thereunto. And in Aſſiſe of Common, all the Tenants of the Land out of which the Common is, ought to be named, *&c.* As in Aſſiſe of a Rentcharge. K

22 Aſſ. 82. Thyrre. 7 Aſſ. Fr. Aſſiſe 121.

If a man have an Aſſiſe of Common, and pendent the Writ, he uſeth the Common, the Writ ſhall abate, but if the Cattel eſcape into the Land, it ſhall not abate the Writ although they feed there. M

And it is to know, Common appurtenant to a Manor may be for Cattel without number, or to a certain number, and may be appurtenant to a Manor by preſcription or by grant made ſince time of memory, and that as well for Cattel certain, as without number. As if at this day a man granteth to one Common of Eſtovers, or of Turbary in Feeſimple to burn in his Manor, by that grant it is appurtenant to the Manor, and if he make a Feoffment of the Manor, the Common ſhall paſs to the Feoffee. And ſo if he grant to a man and his heirs Common as appurtenant to his Manor of *F.* to common in ſuch a Moor, *&c.* Now by that grant the Grantee ſhall have the Common appurtenant to his Manor, and if he make a Feoffment in Fee, or for Life of the Manor, the Feoffee or Leſſee ſhall have the Common. As if an Abbat with the aſſent of his Covent grant to another and his Heirs to find a Chaplain to ſing in his Chapel in his Manor of *D.* if he make a Feoffment of the Manor, the Feoffee ſhall have an Action of Covenant againſt the Abbat and his Succeſſors by that Grant as it appeareth, *M.* 2 *H.* 4. 6. *T.* Covenant, and *H.* 42 *E.* 3. N

26 H. 8. 4. Plow. Com. 381. ac. 5. Aſſ. 9. 2 H. 4. 6. 10 H. 7. 13. 16 H. 7. 9. 42 E. 3. 3.

Writ

Writ of Certificate upon Aſſiſe ſued.

THE Writ of Certificate lieth in divers manners; one is where the Defendant appeareth by Bail and pleads to the Aſſiſe where his Maſter hath a releaſe to plead, or other matter in writing, of which the Jury cannot have notice, then if the Aſſiſe paſs againſt the Bailiff, the Maſter ſhall have a Writ of Certificate upon that Writing, and thereupon he ſhall cauſe the Aſſiſe to return and to be ſworn to try that Deed, *&c.* as ſhall be more fully after ſhewed. As a fine or Recovery. 8 E. 3. *Br.* Aſſiſe 426. H. 4. 4. 5.

And there is another manner of Certificate when the Verdict is not well examined by the Juſtices when they take the Verdict, or when they have not well examined, or fully enquired of the iſſue joined, *&c.*

And the Certificate ought to be ſued in the ſame County where the Aſſiſe was ſued, and may be ſued before the ſame Juſtices before whom the Aſſiſe paſſed, or before other Juſtices. And if the King's Bench or Common Pleas be in the ſame County where the Aſſiſe paſſed, then the Certificate may be ſued in the King's Bench or Common Pleas, if they be in the ſame County where the Aſſiſe paſſed. 21 E. 3. 3. *Br.* Aſſiſe 63. Ve. 32 Aſſ. 1. One ſhall have a Certificate upon a Defeaſance.

And that Certificate ſhall be a Writ directed to the Sheriff, and the Juſtices ſhall have a Patent made to them as they ſhall have in Aſſiſe, *&c.* And the form of the Patent made to the Juſtices ſhall be ſuch: 12 H. 4. 10. 4. 1 Aſſ. 5. Certificate was at the Common Law before Judgment. Ve. 8 E. 3. Firz. Aſſiſe 412. Flow. Com. 92.

Rex dilectis & fidelibus ſuis A. B. *&* C. *ſalut. Quia ſuper quibuſdam articulis contingent. Aſſiſam novæ diſſ. q. inter* A. *&* B. *ſum. fuit & capta coram vobis præf.* B. *&* D. *dilecto & fideli noſtro* I. *apud* N. *per breve noſtrum quædam ſubſunt dubitationes, ſicut ex querela ipſius* A. *accepimus, conſtituimus vos Juſtic. noſtros, una cum his quos vobis aſſociaverimus ad certific. inde capiend. Et ideo vobis præcipimus, quod ad certos diem & locum, quos ab hoc provideritis, certific. illam capiatis, factur. inde quod ad Juſtic. pertinet faciend. ſalvis nobis amerciamentis,* &c. *Mandavimus enim vic. noſtro,* &c. *quod ad certos diem & locum, quos ei ſcire faciatis, jurat. illius aſſ. coram vobis venire faciat. ad certificand. vos ſuper articulis præd.* &c. *In cujus rei teſtimon. has literas noſtras fieri fecimus patentes. Teſte,* &c.

And the form of the Writ of Certificate is ſuch:

Rex Vic', &c. *Quia ſuper quibuſdam articulis contingen. Aſſ. nov. diſſ. quæ inter* A. *&* B. *ſum. fuit & capta coram dilectis & fidelibus noſtris* H. *&* R. *apud* N. *per breve noſtrum de tenent. in* I. *quædam ſubſunt dubitationes, ſicut ex querela ipſius* A. *accepim. conſtituim. præf.* H. *&* R. vel ſic, *præf.* H. *&* D. *dilect. &*

fidel. noſtrum L. Vel ſic, *dilect. & fideles noſtros* N. *& S. Juſtic. noſtros, una cum his quos ſibi aſſociaverimus ad certific. inde capiend. Et ideo tibi præcipimus, quod ad certos diem & locum, quos præd.* N. *& S. tibi ſcire fac. jurat. illius aſſ. coram eis venire fac. ad certific. eos ſuper articulos præd. & ſum',&c. præd.* B. *quod,* &c. *coram,* &c. *ad audiend. illum certific. & habeas ibi nomina jurat. & hoc breve.*

And that Writ lieth properly where the Verdict is not well examined. But if he appear by Bailiff to the Aſſiſe, and plead *Nul. tort.* &c. and it is found againſt him where his Maſter hath a releaſe to plead, and doth not plead it; then his Maſter ſhall have another form of Writ upon the Statute of *Weſt.* 2. *cap.* 15. and the Writ ſhall be ſuch: F

Rex dilect. & fidel. ſuo I. *& ſociis ſuis Juſtic.&c. Cum in Statuto edito apud* Weſtm. *contineatur, quod ſi def. contra quem tranſierit Aſſiſa in ſua abſentia oſtendat cart. vel quiet. claim. ſuper quarum confectione non fuer. juratores examinati, nec examinari potuerint, pro eo quod non fiebat mentio de eis in placitand. & probab. ignorari poterint confect. hujuſmodi ſcriptorum. Juſtic. viſis ſcript. illis faciant ſciri parti quæ recuperavit, qd. ſit ad certum diem, & venire faciant jurat. ejuſdem aſſ. Et ſi per veredictum jurator. vel forte per irrotulament. ſcript. ill. verificatur, puniatur ille qui aſſiſ. impetravit cont. fact. ſuum per certam pœnam in ſtatut. præd. content. Ac ex querela* E. *acceptimus, qd.* I. *nuper arrainavit quand. aſſiſam no. diſſ. per breve noſtr. verſus præf.* E. *& alios,* &c. *de tenementis in* S. *quæ quidem aſſiſa in ipſius* E. *& aliorum abſenc. tranſivit, ut dicitur, ac idem* E. *quoddam ſcriptum quiet. claim. præfat.* I. *habeat de tenement. præd. ſuper cujus confec. Jurat. non fuer. examinati, nec examinari potuerunt, pro eo quod non fiebat inde mentio placiti: Vobis mandam. quod viſ ſcripto ill. eidem* E. *in promiſſ. debitum & feſtinum juſtic. complement. fieri fac. juxta form. Stat. præd.* T. &c.

And that Writ is as a Patent made to thoſe Juſtices, and upon that they award a Certificate to the Sheriff, to warn the party to cauſe the Jurors in the Aſſiſe to come before them. And that Patent or Commiſſion is commonly made to other Juſtices, as unto the Juſtices before whom the Aſſiſe paſſed, and the ſame appeareth by the words of the Patent or Commiſſion. A

But by the Statute of *Weſt.* 2. *cap.* 25. appeareth, That if the Bailiff of the Defendant do alledge a Record in Bar of the Aſſiſe, the Juſtices may take the Aſſiſe notwithſtanding that Plea of the Bailiff, and give Judgment upon the Verdict, *&c.* But then the Defendant in the Aſſiſe may come to the Juſtices, and ſhew that he hath matter of Record to bar the Plaintiff in the Aſſiſe, *&c.* That at another time he barred C

the

the Plaintiff in the like Aſſiſe, brought by him againſt the Defendant; Or that there is a Writ of higher nature depending between them for thoſe Lands; and then he ought to ſue forth a Writ, to cauſe the Record to be brought before the Juſtices before whom the Aſſiſe paſſed, and thereupon when the Record cometh before them, if they perceive that the Record ſhall be a Bar in the Aſſiſe, then the ſaid Juſtices ſhall award a ſpecial Writ of *Scire facias* out of the Record of the Aſſiſe, to warn the party to be before them, *&c.* and if he cannot deny it, nor avoid it, then the Defendant ſhall recover his ſeiſin again, and double damages, and the Plaintiff in the Aſſiſe ſhall be impriſoned at the diſcretion of the Juſtices. And if the Defendant in the Aſſiſe have not any Record to ſhew, but a Releaſe, or other matter in writing, which might bar the Plaintiff who recovered in the Aſſiſe; then if the Defendant ſhew thoſe writings to the Juſtices, before whom the Aſſiſe was taken, the Juſtices thereupon may award a ſpecial Writ of Certificate directed to the Sheriff that he ſummon in the party, and that he cauſe the Jurors in the firſt Aſſiſe, *&c.* to try that matter, *&c.* And if it be found for the Defendant, then the Plaintiff, who recovered by the Aſſiſe, *&c.* ſhall loſe double damages, and ſhall be alſo impriſoned at the diſcretion of the Juſtices, as appeareth by the ſaid Statute.

B But whether the Defendant ſhall ſue a ſpecial Patent to the ſame Juſtices, to proceed as the Writ aforeſaid is, or that they ſhall proceed and award a ſpecial Certificate, upon the matter in Writing ſhewed them by the Defendant hath been a queſtion, becauſe by the Judgment in the Aſſiſe, and execution awarded, their authority by commiſſion is determined as ſome ſay. But I conceive that the Statute is a Commiſſion and Patent ſufficient to give authority to them to award a ſpecial Certificate to warn the party, and to cauſe the Jurors of the Aſſiſe to appear before them upon the matter in writing ſhewed unto them, although Judgment be given in the Aſſiſe and Execution be paſt, for if there be ſuch matter, then their authority remaineth to puniſh the Plaintiff for his ſuit, and to reſtore the Defendant again unto his poſſeſſion, by virtue of the Statute as I conceive.

C And if a man loſeth in an Aſſiſe by default where he pleadeth by Bailiff, where he hath matter in Writing not ſhewed to the Jurors, he may ſue a Certificate upon that matter before the Juſtices, at the next Aſſiſe following, or before the Juſtice of Aſſiſe, or before the Juſtices of the King's Bench, or before the Juſtices of the Common Pleas, and the form of the Writ is ſuch:

Rex Vic', &c. *Quia*, &c. ut ſupra, (uſque ibi,) *accepimus. Tibi præcipimus, quod juratores illius Aſſ. venire facias coram Juſticiar. noſtr. ad prim. Aſſiſam, cum in partes illas venerint, ad certificand. eos ſuper articul. pred. & ſum.* &c. *pred.* B. *quod ſit ad præfat. Aſſiſam coram præfat. Juſticiar. ad audiendum illam certific'.*

And if the Certificate be ſued before the Juſtices of the Common Pleas, then the Writ is ſuch:

Rex Vic', &c. *Quia*, &c. *ut accepimus: Tibi præcipimus, quod juratores illius aſſ. venire facias coram Juſtic. noſt. apud* Weſt. *tali die ad certificand. eos*, &c. ut ſupra.

And if the Certificate be ſued before the King, then the Writ is as above:

Tibi præcipim. quod jurator. illius aſſ. venire fac', &c. *coram nobis apud* E. *die ſabbati*, &c. *ad certificand. nos*, &c.

If a man in *Aſſiſe* brought againſt him pleadeth a releaſe, D or other matter in writing in bar of the *Aſſiſe*, and the Plaintiff doth deny the ſame, by reaſon whereof the ſame doth remain in the keeping of the Chief Juſtice of the *Aſſiſe*; and afterwards a new Commiſſion is made to the Chief Juſtice, and to other perſons, to take all *Aſſiſes* which remain to be taken in that County, for which cauſe they award a re-attachment againſt the Deft. and a Reſummons againſt the Jurors; the Deft. may come and plead the releaſe or writing which is in the keeping of the Chief Juſtice, which was denied, *&c.* And thereupon the Chief Juſtice ſhall have day until the next *Aſſiſes*, to bring in the writing; and if before the next *Aſſiſes* the King's Bench be removed to that County, and that record of the *Aſſiſe* is come into the ſame Court, and the Deft. is re-attached and appeareth not, but maketh default, for which the *Aſſiſe* paſſeth for the Plaintiff, *&c.* and that releaſe not pleaded nor ſhewed, the Defendant ſhall have a ſpecial Writ to the ſaid Juſtice, in whoſe cuſtody the releaſe or writing is, to ſend the ſame into the King's Bench, and thereupon the Defendant ſhall have his Certificate out of the King's Bench, againſt the Pl. upon that matter, and ſuch Writ is in the Regiſter.

If a man ſue a Certificate, he may have a Writ of Aſſociation upon that Writ, as in an *Aſſiſe* of *Novel Diſſeiſin*, and alſo a Writ of *Si non omnis*, as well as he ſhall have in *Aſſiſe* of *Novel Diſſ.* A

And a man may ſue the Certificate before the ſame Juſtices, before whom the *Aſſiſe* paſſed, and then the Certificate ſhall iſſue out of the Rolls of the ſame Juſtices; But he may ſue his Certificate before other Juſtices if he will, and B

then

then the Writ and Patent ſhall iſſue out of the Chancery.

C And if ſome of the Jurors be dead, yet it ſeemeth reaſonable that he have the Certificate; and that it be tried by thoſe who are alive, and by others, *&c.* for that is a new matter upon which they were not charged before, but ſee that matter debated. *H.* 7 *H.* 4. *H.* 12 *H.* 4. and 32 *E.* 3. *lib. Aſſ.*

D *Anno* 43 *E.* 3. It appeareth that a man ſhall have a Certificate before Judgment given in the *Aſſiſe* as well as after the Judgment given.

E And a man ſhall have a Certificate upon an *Aſſiſe* of Darrein preſentment, or an *Aſſiſe* of Mortdauncеſtor, or *Juris Utrum*; and it is reaſon that a man have a Certificate upon an Attaint, if it paſs againſt him by default, where he hath matter to bar the attaint by releaſe or other writing, *&c.*

F And if the Record of *Aſſiſe* be removed into the Common Pleas, the Party may ſue a Certificate in the Common Pleas before the Juſtices there, although the *Aſſiſe* be taken of Lands in another County: See title *Proceß*, *H.* 33 *H.* 6.

G And the Proceſs in a Certificate is Summons againſt the Jury, and the *Venire facias* againſt the Party, *&c.* and after a Diſtreſs. 7 H 4. 45. 2c. 33 H. 6. 20, 21. *nota, Cape pro fine* was awarded pendent the Certificate of Aſſiſe.

H And *Niſi prius* ſhall be granted in a Certificate, if the land be in another County than where the Certificate is brought.

Writ of Aſſiſe of Nuſance.

I *Aſſiſe* of *Nuſance* lieth where a man levieth a *Nuſance* to my Freehold, which I have for life, in tail, or in fee-ſimple, then I ſhall have the Writ to redreſs the Nuſance. 4 E. 3. 36. & 5 E. 2. 43. Fitz. Nuſan. 12.

K And if that the Nuſance be done in one County, and the Land to which the Nuſance is done in another County, then he ought to ſue ſeveral Writs of *Aſſiſe* of Nuſance, to each Sheriff a Writ, and a Patent made to certain perſons to be Juſtices in that *Aſſiſe*, as it ſhall be in *Aſſiſe* of Common of Paſture, or Turbary, or Rent, or the like: and the form of the Writ is ſuch: 4 Aſſ. 3. If Nuſance be, and after he to whom the Nuſance is alien the Land, the Feoffee ſhall not have Aſſiſe, becauſe it was before his Intereſt, but the Tenant ſhall anſwer to the Nuſance, as well before his time as after, 19 Aſſ. 9.

L *Rex Vic', &c. Queſtus eſt nobis* A. *quod* B. *injuſte & ſine judicio exaltavit quoddam ſtagnum in* C. *in com. tuo ad nocumentum liberi tenementi ſui in* L. *in com.* H. *poſt primam tranſfretationem, &c. Et ideo præcipimus, quod ſi prad.* A. *fecerit te ſecurum de clamore ſuo proſequend. tunc fac.* 12 *liberos & legales homines de*

visn, illo videre stagnum illud, & nomina eorum imbreviar, &c.

And in the other Writ which shall be directed unto the Sheriff where the Land is, to which the *Nusance* is, he shall say in the Writ, *Videre tenementum illud*. So that the Jurors where the Land is shall see the Land, and the Jurors in the other County shall see the Pool where the Nusance is done.

And moreover he shall say in the Writ, *Et nomina illorum imbreviar. Et sum. eos per bonos sum. quod sint coram dilectis & fidelibus nostris* R. *&* F. *& his quos sibi associaverimus ad certos dies, & locum in confinio com. prad. quos idem*, &c. *parati*, &c. And the form of the Patent is such:

Rex dilectis, &c. *Sciatis quod constituimus vos Justiciarios ad ass. capiend. quam* B. *arrainavit coram vobis per brevia nostra versus* N. *de quodam stagno exaltato in* C. *in com.* S. *ad nocumentum liberi tenementi sui in* L. *in Comitatu* H. *& ideo*, &c. *quod ad certos*, &c. *in confinio com. prad. quos ad hoc provideritis, assisam illam capiatis, facturi quod ad justitiam pertinet, salvis*, &c. *Mandavimus enim Vic. nostris in com. prad. quod ad certos diem & locum in confinio com. prad. quos ei scire fac. assisam illam coram vobis venire fac. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste*, &c.

21 E. 3. 22. 20 E. 3. 18. 16 E. 3. Fitz. Nusance 3. Ve. 11 H. 4. 25. It shall be brought in *Confinio Comitatus.*

And a man shall have the like Writ, If a man have a way to his Land, or House, and another stop the way, he shall have an Assise of Nusance for that stopping; and if the way be in one County, and the Land to which the way is, in another County, Then he shall have two Writs of Assise of Nusance, to each County one, and a Patent made to certain persons, as is aforesaid; and the form of the Writ is such:

Rex, &c. *Questus est nobis* A. *quod* B. *injuste & sine judicio arrabavit quandam viam in* B. *in com. tuo, ad nocumentum liberi tenementi sui in* C. *in com.* H. *post primam*, &c. *& interim fac.* 12, *&c. videre viam & nomina*, &c. *Et sum.* &c.

And unto the Sheriff where the Land is to which the way belongeth, the Writ is: *Quare arrabavit quandam viam in* B. *in com.* C. *ad nocumentum liberi tenementi sui in* S. *in com. tuo post primam*, &c. *Et ideo tibi præcipimus*, &c. *videre tenement. & nomina eorum imbrev. & sum.* &c. *ad certos*, &c. *in confinio com. prad. quos idem*, &c. And the Patent is such:

Rex dilectis, &c. *Sciatis*, &c. *ad ass. capiend. quam*, &c. *per brevia nostr.* &c. *de quadam via arrat. in* B. *in Com.* Bedford. *ad nocumentum*, &c. *in* C. *in Comitatu* Hunt. *& ideo*, &c. (ut supra.)

21 H. 4. 25

And a man shall have a Writ of Assise, *Quare injuste & sine judicio levavit vel prostravit quoddam fossatum in* N. *ad nocument. liberi tenementi sui in* N. *vel levavit, vel prostravit, vel exaltavit, vel de-exaltavit quoddam stagnum*, &c. *vel obstruxit*

[184]

ſtruxit, vel arctavit quandam viam in N. *ad nocument.* &c. *vel levavit, vel proſtravit quandam ſepem in* N. *ad nocument.* &c. *vel divert. curſum aquæ in* N. *ad nocument. liber. tenemen. ſui in* B. *poſt primam transfretat.* &c. (ut in aſſiſa de communia paſturæ uſque ibi) *de viſn. illo videre foſſat. illud, ſtagnum illud, ſepem illam, viam illam, curſum aquæ illius, & tenement. & nomin. eorum imbreviari & ſum.* &c. (ut ſupra in com. paſturæ) and the form of the Patent is:

Rex dilectis, &c. *Sciatis,* &c. *ad aſſiſam capiend. quam* A. *&c.* 48 E. 3. 17. *verſus* B. *de quodam foſſato levato vel proſtrato in* N. *vel de quodam ſtagno exaltato vel deexaltato in* N. *vel de quodam ſtagno levato vel proſtrato in* N. *vel de quadam ſepe levata vel proſtrata in* N. *vel de quadam via arctata vel obſtructa in* N. *de curſu cujuſdam aquæ diverſo in* N. *Et ideo vobis mandamus, &c.* (ut ſupra.)

A And for what an *Aſſiſe* of Nuſance lieth, appeareth by theſe Verſes.

ſatum, num, s, a,
Foſ ſtag ſepe vi diverſi curſus aquarum,
i. terminari coram Juſtic. aſſiſar. i. placitari in Banco
Poſcunt aſſiſam: mercatum, feria, bancum.

And it appeareth by theſe Verſes, to ſet up a Fair or a Market unto the Nuſance of another Fair or Market, that he unto whoſe Nuſance that Fair or Market is ſet up, ſhall 11 H. 4. 47. have a writ for ſo doing returnable into the King's Bench: and the writ ſhall be in ſuch form:

Rex Vic. &c. *Si* A. *fecerit,* &c. *tunc ſum.* &c. P. *quod ſit coram Juſtic. noſtris apud Weſt.* &c. *oſtenſ. quare levavit quoddam mercatum vel quandam feriam in* I. *ad nocumentum liberi mercati, vel libera feria ipſius* A. *in eadem villa, vel in alia poſt primam transfretationem,* &c. *ut dicit, & habeas ibi ſum. & hoc breve.*

There is alſo another form of writ for the ſame which is a *Quod permittat*, which is ſuch:

Rex Vic. &c. *Præcipimus* P. *qd. juſte,* &c. *permittat. Epiſcopum Lincoln. proſternere quoddam mercatum in Uppingham quod* P. *de* M. *pater præd.* P. *cujus hæres ipſe eſt, injuſte,* &c. *levavit ad nocument. liberi mercati* C. *nuper Epiſcopi Lincoln. prædeceſſ. præd. Epiſcopi in Luddington, ut dicit, & niſi fecerit, & præd. Epiſcop. fecerit te ſecurum,* &c. *tunc ſum. præd.* P. *quod ſit,* &c. *oſtenſ quare,* &c.

And that writ was granted by the chief Juſtice and Clerks of the Chancery, by which it ſeemeth, that a man may diſturb another to have or keep any Fair or Market unto the Nuſance of his Fair or Market.

Writ

Writs of Nuſance which are Vicontiel.

By the Statute of 6. R. 2. the Plaintiff may chooſe to have it before the Juſtices, or the Sheriff, Regiſter. 199.

WRits of *Nuſance* which are vicontiel, are thoſe which do appear by the Verſes following,

Fab fur porta, domus, vir rica ca gur mo gultum ges lendinum murus, ovile,
Et Pons, tradantur hæc vicecomitibus.

And the form of the Writ is ſuch: *Rex Vic', &c. Queſt. eſt nobis* A. *de* B. *qd.* B. *injuſte levavit vel proſtravit quandam dom. vel obſtruxit quendam gurgitem in* N. *ad nocument. &c. in eadem villa vel in alia poſt prim. tranſfretationem, &c. in Vaſc. Et ideo tibi præcipimus, quod loquelam illam audias, & poſtea eam inde juſte deduci fac. ne amplius inde clamorem audiamus pro defectu juſtitiæ.*

After the ſame manner are writs, *de ovili, porta, virgulto, molendino, Latrina & ſimilibus Locatis vel proſtratis.* And thoſe writs may be removed at the ſuit of the Plaintiff or Defendant out of the County into the Common Pleas by a *Pone*, with cauſe ſhewed in the writ, as in a Replevin of his Cattel; and the *Pone* is ſuch: C

Rex Vic', &c. Pone ad petitionem petentis loquelam quæ eſt in com. tuo per breve noſtrum inter A. *&* B. *de quadam domo levat. vel proſtrat. in* C. *per ipſum* B. *injuſte levat. vel totalit. proſtrat. ut dic. & ſum. &c.* ut in pone de averiis.

Regiſter, 199.

And the Rule in the Regiſter is, That if he who erected or throweth down a houſe, wall, or the like, dieth, that he to whoſe Nuſance it is, or his Heir, ſhall have a *Quod permittat* againſt his Heir who did the Nuſance, which writs are amongſt the writs of *Quod permittat.*

18 E. 3. 22. Nuſance 1.

And a man ſhall have an *Aſſiſe* of Nuſance for building of a D houſe higher than his Houſe, and ſo near his, that the rain which falleth upon that houſe, falleth upon the Plaintiff's houſe.

4 E. 3. Fitz. Nuſance 1. 46 E. 3. 23.

And a man ſhall not have an Aſſiſe of Nuſance of a way, E if it be not appendant or appurtenant to his Freehold, as if a man build a Houſe over the way which I have to my Houſe, or to the Church, I ſhall have an *Aſſiſe* of Nuſance.

50 E. 3. 12.

And in a writ of Nuſance, the Defendant ſhall have the F View, and ſhall be eſſoyned; and if afterwards he make default, a diſtreſs ſhall be awarded againſt him for to anſwer, *&c.* and not ſave his default. *P.* 42. *E.* 3. 9.

[185]

And if a man levy a Nuſance unto the Houſe of another G who hath therein an Eſtate but for term of years, then he ſhall not have an Aſſiſe of Nuſance, but an Action upon the Caſe

Caſe againſt him, becauſe he hath no Freehold: but yet it ſeemeth he may enter and abate the Nuſance.

A And if a writ of Nuſance be removed out of the County, and the Sheriff return, that the Defendant hath not any thing, &c. the party ſhall have Attachment, Diſtreſs, and no other proceſs, &c. becauſe it toucheth Freehold. But in an *Aſſiſe* of Nuſance; the proceſs is as in *Aſſiſe of Novel Diſſeiſin.*

But his Leſſee ſhall have, 23 H. 3 Fitz. Aſſ. 437.

B And the Pariſhioners may pull down a wall which is ſet up to their Nuſance in their way to the Church, *qd.ve.6.E.2.*

C And in an *Aſſiſe* of Nuſance he may in his Plea ſhew the Nuſance to be divers Freeholds.

D And if the ways be ſtraitned, or the Allies or Lanes in any Town, City or Borough Corporate be filled with filth or dung, or ſuch things by which means infection may increaſe, then he who will ſue may procure ſuch writ to have them cleanſed and made clean; and the writ is ſuch:

Rex Majori & Ballivis ſuis Oxon. ſalutem. Quia ex teſtimonio accipimus fide digno, quod per fimos & fimaria, necnon porcarios, & frequent. acceſſ. porcorum, ac plures alios fœditates, quæ in viis & venellis villa prædict. & ſuburb. ejuſdem exiſtunt, aer ibidem in tantum corrumpit. & inficit. quod magiſtris & ſcholaribus in eadem commorant. & aliis ibidem conſervantibus & tranſeuntibus horror. abhominabilis incutitur, commoditas ſalubris aeris impeditur, ſtatus hominum graviter læditur, aliæq; intolerabiles incommoditates, & quamplurima diſcrimina ex. corrupt. hujuſmodi provenire noſcunt. in magiſtror. & ſcholarum prædict. & aliorum ibidem converſant. & tranſeunt. nocument. & vita ſuoru periculum manifeſtum. Nos nolentes hujuſmodi defectus enormes, & intolerabiles ibidem ulterius ſuſtiner. Vobis præcipimus, quod omues vicos & venellas in villa prædict. & ejus ſuburb. de fimis & fimariis, ac aliis fœditatibus præd. mundari, & mundatos impoſterum conſervari ſine dilat. aliqua ſociatis, ne per corruptiones aut fœditates præd. damnum ſeu periculum aliquibus in veſtri defect. eveniat in futurum per quod ad vos tanquam ad mandati noſtri contemptores graviter capere debeamus, Teſte, &c.

And upon that he ſhall have an *Alias* a *Pluries*, and *Attachment*, if they do not cleanſe them, &c. But for Villages in the County which are not corporate, ſuch writ doth not lye.

Writ

Writ de Aſſociation in Aſſiſe, and of Writs de Si non omnes.

A Writ of *Aſſociation* is a Patent made to one or more, when an *Aſſiſe of Novel Diſſeiſin*, or Certificate upon *Aſſiſe of Novel Diſſeiſin* is ſued. Then the King of his own Motion, or the Plaintiff may ſue to have other perſons aſſociated unto the Juſtices of Aſſiſe to take that Aſſiſe; and the form of the writ or Patent is ſuch:

16 Aſſ. 6. Aſſiſe 206. Note, there is one *Si non omnes* general, which is entred of Record, and remains with the Juſtices for their Warrant to take other Aſſiſes; and the ſpecial, *Si non omnes*, is annexed to the Record, and ſent as parcel.

Rex dilectis & fidelibus ſuis C. *&* D. Vel *dilecto & fideli ſuo* F. *ſal. Sciatis quod aſſociavimus vos vel alterum veſtrum, vel vos dilect. & fidelibus noſtris* A. B. *&* G. *ad aſſ. nove diſſ. capiend. quam* F. *arrainavit coram præf.* A. B. *&* G. *per bre. noſtrum verſus* H. *de ten. in* N. *ita tamen quod ſi ad certos diem & locum quos iidem* A. B. *&* G. *ad hoc providerint vel alterum veſtrum vel vos adeſſe contigerit, tunc vos vel alterum veſtrum vel vos ad hoc in ſocios vel in ſocium admittant, aliquin iidem* A.B *&* G. *non expectata præſentia veſtra vel alterius veſtr. vel veſtra, ad captionem illius aſſ. procedant. Et ideo vobis mandamus quod vos vel alter veſtrum vel vos captioni aſſ. illius una cum præf.* A.B. *&* G. *intendat. in forma præd. facturi inde quod ad juſtitiam pertin. ſecundum legem & conſ. regni noſtri: ſalvis nobis amerciamentis inde provenient. Mandam. enim eiſdem* A.B. *&* G. *quod vos vel alterum veſtrum vel vos ad hoc in ſocios vel in ſocium admittant, ſicut præd. eſt. In cujus rei teſtim. has literas*, &c.

See for the expoſition of (*alter*) Dyer 310. 338. L. 5 E. 4. 11. Br. Aſſiſe 286.

And upon that Patent of *Aſſociation* the King ſhall ſend his Writ unto the Juſtices of Aſſiſe, commanding them thereby to admit him or them, &c. and the Writ is ſuch:

Rex dilect. & fidelibus ſuis A. B. *&* G. *ſal. Sciatis quod aſſociavimus vobis dilect. & fideles noſtros* G. *&* D. *vel alterum ipſorum*, Vel ſic, *dilect. & fidel. noſtrum* F. *ad aſſ. nove diſſ. capiend. quod* E. *arrainavit coram vobis per bre. noſtrum verſus* H. *& alios in brevi noſtro originali content. de tenement. in* N. *vel de commun. paſturæ in* N. *ita tamen quod ſi ad certum diem & locum, quos ad hoc providerit is, ipſos* C. *&* D. *vel alterum ipſorum:* Vel ſic, *ipſum* F. *ad hoc in ſocios vel in ſocium admitt. aliqu. vos non expectata præſentia eorum* C. *&* D. *vel alterius ipſorum:* Vel ſic, *vel ipſius* F. *ad captionem illius aſſ. procedat. Et ideo vobis mandamus, quod*

quod ipſos C. & D. vel alterum ipſorum: Vel ſic, *vel ipſum F. ad hoc in ſocios vel in ſoctum admitt. in form. præd. Mandavimus enim eiſd. C. & D. quod ipſi vel eorum alt.* Vel ſic, *vel idem F. quod una vobiſcum ad hoc intendant vel intendat, ſicut præditt. eſt. Teſte, &c.*

F And if ſeveral Aſſiſes, or Certificates of *Aſſiſes* be ſued before ſeveral Juſtices in one County for Lands, Tenements, Rents or Commons, and afterwards the King maketh new Juſtices to take all Aſſiſes or Certificates, and Juries which are to be taken in the ſame County, the King may make an *Aſſociation* to the Juſtices new aſſigned; thus:

Rex dilect. & fidel. ſuis W. de D. R. de A. & R. de P. ſalut. [186] *Sciatis quod cum conſtituerimus vos Juſtic. noſtros ad omnes aſſ. jurat. & certif. coram quibuſcunq; Juſt. noſtris per brevia noſtra in com. Linc. arrainatas capiend. Et poſtmod. vobis mandaverimus, quod ſi vos omnes cap. aſſ. juratam, & certif. præd. commode intereſſe non poſſitis, tunc duo veſtrum, qua præſentes eſſe contigerit, ad captionem earundem aſſ. juraturam, & certif. ſecund. legem & conſuet. regni noſtri procederitis, aſſociavimus vobis dilect. & fidel. noſtr. A. ad aſſ. juratis & certif. præd. una vobiſcum capiend. ita tamen quod ſi ad cert. dies & loca, quos vos vel duo veſtr. ad hoc provideritis, ipſum A. adeſſe contigerit, tunc vos vel duo veſtrum ipſum A. in ſocium admittat. alioquin vos vel duo veſtr. non expectat. præſentia ipſius A. ad caption aſſ. juratarum & jertif. præditt. procedatis, & ideo, &c. mandamus, &c.*

And a Patent made to him who ſhall be Aſſociate, reciting the Patent made to the Juſtices, and the Writ of *Si non omnes*, and then ſhall ſay, *Aſſociavimus vos, &c.* And the form of the Writ is ſuch:

Rex dilect. fidel. ſuo A. ſalut. Sciatis quod cum conſtituerimus dilect. & fidel. noſtros W. de D. R. de A. & R. de P. Juſt. noſtros ad omnes aſſ. jurat. & certific. coram quibuſcunq; Juſtic. noſtros per brevia noſtra in com. Linc. arrain. capiend. & poſtmod. eiſdem W. de D. R. & R. mandavimus quod ſi ipſi omnes captioni aſſ. jurat. & certif. præd. commode intereſſe non poſſint, tunc duo eorum, quos tunc adeſſe contigerit ad captionem earundem aſſ. jurat. & certif. ſecund. legem & conſuet. regn. noſtri procederent, aſſociavimus vos præf. W. R. & R. & duobus eorum ad aſſ. jurat. & certif. præd. in com. præd. capiend. ita tamen quod ſi ad certos dies & loca quos iidem W. R. & R. vel duo eorum ad hoc providerint, vos adeſſe contigerit, tunc ipſi vel duo eor. vos ad hoc in ſocium admittant, alioquin iidem W. R. & R. vel duo eorum non expectata præſentia eorum, ad caption. earundem aſſ. jurat. & certif. præditt. proced. & ideo vobis mandam. quod caption. aſſ. jur. & certif. præd. una cum præf. W. R. &

& R. vel duobus eor. intendatis in form. prad. faciuri, &c. ſalvis, &c. Mandamus enim eiſdem W. R. & R. quod ipſi vel duo eor. vos ad hoc in ſocium admittant, ſicut prad. eſt. In cujus rei, &c. has literas noſtras fieri fecimus paten. Teſte, &c.

L. 5. E. 4. 211. Br. Aſſ. 386.

And afterwards when the King hath made his Juſtices of A Aſſiſe by Letters Patents; and by other Letters Patents hath aſſociated unto them another perſon, yet he is uſed afterwards to make other Letters Patents, as well unto the Juſtices of Aſſiſe, as to thoſe whom he hath aſſociated unto them, that if they all do not come at one time, to take thoſe Aſſiſes, Juries, and Certificates, that then thoſe who do come ſhall take the ſame Aſſiſes, Juries, and Certificates: and that Patent is called a *Si non omnes*: and the form of the Patent is ſuch:

Rex dilectis & fidel. ſuis W. de D. R. de A. & R. de P. & A. de B. ſalut. Cum conſtituerimus vos praf. W. R. & R. Juſticiar. noſtros ad omnes aſſ. &c. (uſq; ibi) *arrain. capiend. & poſtmod. vobis praf. W. R. & R. monſtraverimus, quod ſi vos omnes*, &c. *procederitis ſubſequen. quod aſſociamus vobis & duobus veſtrum praf. A. ad aſſ. jurat. & certific. prad. in com. prad. capiend. vobis mandam. quod ſi vos omnes captioni aſſ. jurat. & certific. prad. commodo intereſſe non poſſitis, tunc tres vel duo veſtrum, quorum alterum veſtrum vos praf. W. R. & R. unum eſſe volumus, ad captionem earund. aſſ.* &c. *ſecundum legem & conſ. regni noſtri procedatis*, &c. *Teſte*, &c.

And theſe three Patents next before are commonly made B when any Aſſiſe is ſued; as one to the Juſtices of Aſſiſes, and another Patent to the Clerk of the Aſſiſes of Aſſociation, and the Patent of *Si non omnes*, as well made to the Juſtices and the Clerk of the Aſſiſes together.

And if the King make his Juſtices of Aſſiſe in any County, C and afterwards he maketh an aſſociation to them, and a Patent of *Si non omnes*, &c. And afterwards divers Aſſiſes or Certificates of Aſſiſes remain before them not determined. The King at the next Aſſiſes may make a new Commiſſion unto other Juſtices to take all thoſe Aſſiſes and Certificates, and may make a new aſſociation unto them by another Patent, and a *Si non omnes* alſo directed unto them.

32 H. 6. 10.

But a general Patent of Aſſiſe to take all Aſſiſes and Juries, D &c. and aſſociation lyeth. But *M.* 32. *H.* 6. it is holden, that an aſſociation after another aſſociation allowed and admitted doth not lye, nor that the Juſtices then do not admit other aſſociation in that Writ afterwards, ſo long as that writ and Commiſſion ſtand in force.

L. 5 E. 4. Br. Aſſiſe 385.

But in a ſpecial Aſſiſe no Aſſociation ſhall be made as it is E holden the ſame year. *M.* 32. *H.* 6. for he hath not in the Writ

Writ theſe words. *Et his quos ſibi aſſociavimus.* But the writ is directed to the Sheriff without thoſe words in the Writ, nor thoſe words are not in the Patent made to the Juſtices of that ſpecial Aſſiſe.

F But if thoſe words be in the Writ, and in the Patent made to the Juſtices, then it ſeemeth an Aſſociation ſhall be made in that ſpecial Aſſiſe, as in other. And it appeareth in the Regiſter, That other aſſociation lieth after aſſociation in one writ.

G And upon a new Commiſſion made to other Juſtices, that old Juſtices of Aſſiſe ſhall deliver their Records of the Aſſiſe unto the new Juſtices by Indenture, upon a writ directed to them to deliver the Records.

H And a man may ſue a Patent of aſſociation for ſeveral Aſſiſes, and the form of the writ is ſuch:

Aſſociavimus vos, vel alterum veſtrum, &c. ad Aſſ. no. diſſ. capiend. quam A. arrainavit cor. praf. &c. de tenementis in N. *& ad aſſ. no. diſſ. capiend. quam* C. *arrain. cor. eiſd. &c. verſus praf.* B. *de tenementis in eadem villa, Ita tamen quod ſi, &c.*

A And if the King make two men his Juſtices of Aſſiſe in one County, and afterwards one of them is elſewhere in the Kings Service, ſo that he cannot intend to take thoſe Aſſiſes or Juries, then the King by his Patent may make another Juſtice in his Room, to take thoſe Aſſiſes and Juries, and that Patent is in the nature of an Aſſociation; and the form of the writ is ſuch:

Rex dilecto & fideli ſuo A. *ſalut. Sciatis qd. cum nuper conſtituer. vos & dilect. & fidelem noſtrum* G. *Juſt. noſtr. ad omnes aſſ. juratas, & certific. cor. quibus c. Juſticiar. noſtris per brevia noſtra in Comitatu* L. *arrain. capiend. ac praf.* G. *quibuſd. obſequiis noſtris de mandato noſtro alibi intendat, per qd. capioni earund. aſſiſar', juratar. & certificar. vacare non poteſt, ut accepimus, loco ipſius* G. *conſtituim. dilect. & fidel. noſtr.* W. *Juſtic. noſtr. ad aſſiſas, juratas, & certifi. prad. una vobiſc. capiend. Et ideo vobis mandamus, qd. ipſum* W. *loco ipſius* G. *ad hoc in ſocium admittatis in forma prad. Mandamus enim eidem* W. *quod loco ipſius* G. *una vobiſcum ad hoc intendat, &c.*

Yet he is Judge before they admit him by Markham. L. 5. E. 4. 111. Br. Aſſ. 386.

And a Patent ſhall be made to him who ſhall be aſſociate unto them in the place of G. which ſhall be ſuch:

Rex dilecto & fideli ſuo W. *ſalutem. Sciatis qd. cum nuper conſtituimus dilectos & fideles noſtros* A. *& G. Juſtic. noſtros ad omnes aſſ. &c.* (ut ſupra uſq; ibi) *ut accepimus, loco ipſius* G. *conſtituimus vos Juſtic. noſtr. ad aſſ. jurat. & certific. prad. una cum praf.* A. *capiend. Et ideo vobis mandamus, qd. loco ipſius* G. *cum praf.* A. *ad hoc intendat. in forma prad. ſalturi, &c. ſalvis, &c. Mandavimus enim eidem* R. *qd. vos loco ipſius* G. *ad hoc in ſocium admittat. ſicut prad. eſt. In cujus, &c.*

And

of Aſſociation unto another to aſſociate him and the two in the room of him who is dead, and a cloſe writ ſhall be directed to the two Juſtices who are alive to admit him, &c. and it appeareth by the writ, that if the King maketh three Juſtices to take Aſſiſes, and make them a Patent of *Si non omnes*, that if one of them dieth, yet the other two may proceed; and the Patent is ſuch;

L. 5 E. 4. 111. Br. Aſſiſe 286.

Rex dilecto & fideli ſuo I. *de* O. *ſalutem. Sciatis quod cum nuper conſtituerimus dilectos & fideles noſtros* G. I. *&* S. *Juſtic. noſtr. ad omnes aſſ. jurat. & certific. coram quibuſcunque Juſtic. noſtr. per brevia noſtra in Comitatu* S. *&c. arrain. capiend. ac poſt mortem prad.* S. *diverſ. aſſ. jurat. & certific. coram præfat.* I. *&* I. *arrain. exiſtant, nos certis de cauſis conſtituimus vos Juſtic. noſtr. tam ad omnes aſſ. jurat. & certific. coram prad.* I. I. *&* S. *& poſtmodo coram eiſdem* I. *&* I. *quam ante coram quibuſcunque Juſtic. noſtr. in com. prad. arrain. una cum eiſdem* I. *&* I. *capiend. Et ideo vobis mandamus, quod ad aſſ. jurat. & certific. una cum præfat.* I. *&* I. *capiend. attendat. in forma prad. ſalt. &c. ſalvis. Mandamus enim prædict.* I. *&* I. *quod vos ad hoc in ſocium admitt. ſicut prad. eſt.*

And a cloſe writ ſhall be directed to the Juſtices to admit the ſaid Juſtice *W.* into their Society.

And the King may make aſſociation in Juries as well in Aſſiſes, as alſo in Attaints. And if the King make a Commiſſion to take an attaint or other Jury, and an Aſſociation in the ſame, and after one of the Juſtices dieth, the King may make a new aſſociation in the ſame writ, and ſo he may make one aſſociation after another in the ſame writ, as appeareth by the Regiſter; and the writ is ſuch:

Rex dilect. &c. I. *de* M. R. *de* M. *&* I. *de* F. *ſalutem. Cum nuper conſtituiſſemus* W. *de* O. *& vos præfat.* I. *de* M. *&* R. *Juſtic. noſtr. ad jurat. 24. milit. capiend. quam* R. *arrain. coram præfat.* W. *& vobis præf.* I. *de* M. *&* R. *per breve noſtr. verſus* P. *ad convincend. jurator. aſſ. no diſſ. quæ inter ipſum* P. *& præf.* R. *ſum. fuit, & capta per breve noſtrum apud* H. *coram præf.* W. *& vobis præf.* R. *de tenem. in* S. *in com.* N. *& poſtmodo per breve noſtr. aſſociaver. vobis præf.* I. *de* M. *&* R. *vos præf.* I. *de* F. *ad omnes aſſ. jurat. &c. in dicto com. arrain. una cum præf.* W. *& vobis cum præf.* I. *de* M. *&* R. *vel duobus veſtrum capiend. & jurat. ill. coram præf.* W. *& vobis præf.* R. *&* I. *de* F. *virtute aſſociation. prad. uſque ad caption. ejuſdem extiterit per placitata, ac idem* W. *jam diem clauſit extrem. loco ipſius* W. *conſtituimus dilect. & fidel. noſtr.* B. *ad jurat. illam una vobiſcum capiend. Vobis mandamus, quod præf.* B. *loco ipſius* W. *ad hoc admittat. & ad jurat. illam capiend. una cum ipſo procedatis ſecundum legem & conſuetudinem regni*

regni noſtri Mandamus enim præf. B. quod una vobiſcum ad hoc intend. ſicut prædictum eſt.

And thereupon another Patent ſhall be made to the ſaid B. of aſſociation, as before in other Caſes.

Fury 2 H. 4. 2. he is Officer, Judge and Commiſſioner in this Writ.

D And an aſſociation may be made unto the Sheriff upon a writ of *Rediſſeiſin* directed to him as well as it may be upon an Aſſiſe of *Novel. diſſ.* as appeareth by the Regiſter; which writ was awarded by *W. de Harleſton.*

12 H. 4. 19, 20. L. 4. 111. Br. Aſſiſe. 286. 14 Aſſ. 15. Br. Aſſ. 196.

A And although the Aſſiſe be diſcontinued for not coming of the Juſtices, *&c.* yet when the *Reattachment* is ſued, the writs of aſſociation, and of *Si non omnes* ſtand in force; and a Reattachment ſhall or may be ſued to revive thoſe Aſſiſes, although there be ſeveral adjurnments of the Aſſiſes, yet the aſſociations and writs of *Si non omnes* ſhall ſerve for all the Aſſiſes.

Writ of Rediſſeiſin.

B THe Writ of *Rediſſeiſin* lieth where a man doth recover by Aſſiſe of *Novel Diſſeiſin* Land, Rent or Common, and the like, and is put in poſſeſſion thereof by Verdict and afterwards he is diſſeiſed of the ſame Land, Rent or Common by him by whom he was diſſeiſed before. Then he ſhall this have Writ upon the Stat. of *Merton*, c. 3. and the form of the writ is ſuch:

C *Rex Vic,* &c. *Monſtraver. nobis* A. *&* B. *uxor eius, quod cum* R. *quondam vir ipſius* B. *&* *ipſa* B. *in Curia noſtra coram. Juſtic. noſtr. ultimo itinerantibus apud* N. *in Comitatu tuo.* Vel ſic, *coram dilect. & fidelib. noſtr.* H. *&* K. *Juſtic. noſtr. ad aſſ. in Comitatu præd. capiend. aſſign. apud.* Vel ſic, *ſi Juſtic. mort. fuer. coram* H. *&* *ſociis ſuis nuper Juſtic. noſtr. ad aſſiſ. in Comitatu præd. capiend. aſſign. apud* N. *recuperaſſent ſeiſin. ſuam verſus* S. *de vigint. acr. terræ, &* *decem ſolidat. reddit. cum pertin. in* K. *pro recognit. aſſiſæ novæ diſſ. inter eos,* &c. Vel ſic, *inter præf.* A. B. *&* S. *capt. præfat.* S. *ipſos* A. *&* B. *de præd. terra & reditu.* Vel ſic, *de una acra terræ de terra præd. iterum injuſte diſſeiſivit: Et ideo tibi præcipimus, quod aſſumpt. tecum cuſtodib. placitorum coronæ noſtræ, &* 12 *tam militib. quam aliis liberis & legalib. hominib. de Comitatu tuo de illis qui in prima jurata fuer. quam aliis, in propria perſona tua acced. ad præd. terram & tenementum, unde reddit. inde provenit, & per eorum ſacramentum diligent. inde fac. inquiſit. Et ſi ipſos* A. *&* B. *per præfat.* S. *de præd. terra & reditu iterum injuſte diſſeiſitos inveneris, tunc ipſum* S. *capias & in priſona noſtra ſalvo cuſtodiri fac. ita quod à priſona illa nullo modo deliberetur ſine mandato noſtro ſpeciali: & ipſos* A. *&* B. *de præd. terra, & reditu reſeiſir. & damna ſua in duplum, quæ occaſione*

illius rediſſeiſ. ſuſtinuer. per ſacramentum prad. 12. taxari, & de terris & catall. prad. S. in ballivatua ſine dilatione fier. & eiſdem A. & B. habere fac. juxta formam Statuti de hujuſmodi rediſſeiſ. proviſ. Et ſcire fac. præf. S. & D. qui terram illam nunc tenet, quod inquiſit. illi faciend. interſit, ſi ſibi viderit expedire. Teſte, &c.

And by that Writ appeareth, That a man ſhall have a *Re-* D
diſſeiſin againſt the Tenant, if he recover by Aſſiſe of *Novel Diſſeiſin* before Juſtices in Eyre, or before Juſtices of Aſſiſe; and ſo if he recover in Aſſiſe of *Novel Diſſ.* in the King's Bench or Common Pleas, if he be rediſſeiſed, he ſhall have that Writ.

If husband and wife be diſſeiſed, and recover by Aſſiſe, and E
the husband dieth, and the wife taketh another husband, and they be diſſeiſed again, by the Regiſter they ſhall have a Writ of *Rediſſeiſin*, although the husband were not diſſeiſed before; and the Writ willeth that the Sheriff enquire whether they were diſſeiſed before, and ſo the husband was not: but that is not material, becauſe it is the Right of the wife, and ſhe was diſſeiſed before. But if the wife loſe in the Aſſiſe of *Novel Diſſ.* and afterwards take husband, and they rediſſeiſe the Plaintiff, he ſhall not have a Writ of Rediſſeiſin, *quod ve. H. 9 H. 4.*

And alſo *Rediſſeiſin* lieth againſt him who committed the F
Rediſſeiſin, and againſt another who was not Diſſeiſor, if he be Tenant of the Land.

And alſo if a man recover Land by Aſſiſe of *Novel Diſſ.* G
and after is rediſſeiſed of parcel of the ſame, he ſhall have a Writ of *Rediſſeiſin.*

And in a *Rediſſeiſin* againſt husband and wife, the Writ H
ſhall be thus in the end. *Et idem* A. *damna ſua in duplum qua occaſione illius rediſſ. ſuſtinuit de terris ipſorum* B. *& S. & catallis ipſius* B. *in ball. tua*, becauſe the wife hath not any Chattel.

And if the Sheriff will not execute the Writ of *Rediſſeiſin*, I
he ſhall have an *Alias* and a *Pluries* directed to him, and if he then do it not, he ſhall have an *Attachment* againſt him to the Coroners, *&c.* and upon the ſame, diſtreſs *infinite.*

And it appeareth in the Regiſter, That a man ſhall have K
a Writ of Aſſociation in a *Rediſſeiſin*, and the Writ is ſuch:

Rex Vic', &c. *Sciatis qd. cum nuper ad proſecut.* N. *nobis ſuggerent. ipſum in Curia noſtra coram*, &c. *apud* K. *per breve noſtrum recuperaſ. ſeiſinam ſuam verſus* S. &c. *recitando totum breve* (uſque ibi) *ſi ſibi viderit expedire, aſſociavimus tibi dilect. & fidel. noſtrum* R. *ad præmiſ. tecum faciend. & explend. ita tamen, quod ſi ad cert. diem quem ad hoc provideritis, ipſum* K. *adeſ. contigerit, tunc ipſum ad hoc in ſocium admitt. aliquin tu non expectata præſentia ipſius* R. *ad præmiſ. faciend. & explend.*

proced.

procēd. Et ideo tibi præcip. quod ipſum R. *ad hoc in ſocium admitt. in forma prad. Mandavimus enim eidem* R. *quod ad præmiſ. tecum faciend. & explend. intend. ſicut prædictum eſt.*

And by the Regiſter, the Writ directed to the Sheriff ſhall be cloſe, as alſo the other Writ directed unto him who is aſſociated to him, and yet the ſame is in its nature a Patent.

L And if a man recover by Aſſiſe of *Novel Diſſeiſin* Common of Paſture, or other profit apprender in the ſoil of another, or any Office, or Corody; if he be rediſſeiſed, he ſhall have a Rediſſeiſin: and the Writ ſhall be ſuch:

Rex Vic', &c. *Monſtravit nobis* A. *quod cum ipſe in Curia noſtra cōram dilect. & fidel. noſtr.* W. *& ſociis ſuis Juſtic. noſtr. ad aſſiſ.* &c. *aſſign. apud* N. *per breve noſtrum recuperaſſet ſeiſinam ſuam verſus* I. *de communia paſtur. in* S. *quæ pertinet ad liberum tenementum ſuum in eadem villa, per recogn. aſſiſ. novæ diſſ. ibi inde inter eos capt. prad.* I. *præſ.* A. *de prad. communia iterum injuſte diſſeiſivit. Et ideo,* &c. *acced. ad paſturam illam & per eorum ſacramentum,* &c. *de rationabil. eſtover. ſic recuperaſſet ſeiſin. ſuam verſus* I. *de rationabil. eſtover. ſuis capiend. in tribus millib. acr. boſci cum pertin. in* W. *quæ pertinent ad liberum tenementum ſuum in eadem per recogn. aſſiſ.* &c.

A And if a man recover by Aſſiſe of *Novel Diſſeiſin* any Land or Tenement before the Bailiffs of any Liberty, where they demand Conuſance of Pleas before Juſtices of Aſſiſe, and the Juſtices grant the ſame, becauſe the Lands are within that Liberty, and afterwards he be rediſſeiſed of the ſame Land, then he ſhall have a writ of Rediſſeiſin; and the writ ſhall be ſuch:

Rex Vic. Berk' *ſalutem. Monſtravit* A. *quod cum ipſe nuper arrainaſ. quandam aſſ. no. diſſ. cor. dilect. & fidelib. noſtris* I. *& ſociis,* &c. *aſſign. per breve noſtr. verſus* P. *de duobus pedibus terræ in longitudine, & uno pede terræ in latitudine cum pertin. in* W. *quæ quidem aſſiſa per eoſd. Juſtic. in Cur. Abbat. de* Reding. *juxta libertates eidem Abbati per cartas progenitorum noſtror. quondam regum Angliæ & confirmat. noſtram conceſſ. cor. hall. ejuſd. Abbat. returnata fuit placitand. ac idem* A. *ſeiſinam ſuam de terra prad. verſus præf.* E. *in ead. cur. recuperaſſet per recogn. aſſ. no. diſſ. ibi inter eos capt. præf.* E. *ipſum* A. *de prad.* &c. *iterum,* &c. *ut in primo brevi.*

And alſo a man ſhall have a Rediſſeiſin upon a recovery in Aſſiſe of Nuſance, *de ſtagno injuſte levat.* &c. or *de curſu aquæ diverſo*, or *de via arctata & obſtructa*; and the form of the Writ is ſuch:

Rex Vic', &c. *Monſtravit nobis* A. *&c.* (uſque ibi) *aſſign. arrainaver. quandam aſſiſam verſus* B. *per breve noſtrum de quodam ſtagno injuſte levato in* N. *ad nocumentum liberi tenementi ſui in* K. *& per recognit. ejuſdem aſſiſæ inde inter eos apud* E.

capt. coram eiſdem Juſtic. diſtrainavit ſtagnum illud per præf. B. levatum eſſe proſternend. prad. B. ſtagnum illud iterum injuſte & ſine judicio levavit: & quia hoc injuſtum eſt & manifeſtum contra pacem noſtram: Tibi præcipimus, quod aſſumptis tecum, &c. (uſque ibi) *accedas ad ſtagnum illud & tenementum, & per eorum ſacramentum diligenter inde fac. inquiſition. Et ſi per inquiſitionem illam inveneris quod prædict. ſtagnum illud iterum injuſte levaverit, tunc ipſum* B. *capias, &c.* (uſq; ibi) *ſpeciali, & ſtagnum illud ſine dilatione proſterni, & eidem A. damna ſua ad duplum, qua occaſione illius rediſſeiſin. ſuſtinuit, &c.* (uſque ibi) *ſine dilatione fieri habere fac. juxta form.* &c. ut ſupra.

And the like Writs are in the Regiſter of Rediſſeiſin, for the C miſ-turning of a Mill, or of a Way, or of an Office, and the like.

And if the Sheriff do deliver any ſuch without the ſpecial Command of the King, who are convict of ſuch Rediſſeiſins, he ſhall be grievouſly amerced, and notwithſtanding thoſe who are ſo delivered, ſhall be alſo grievouſly puniſhed, *&c.* by the Statute of *Marlebridge*, cap. 8.

And by the Statute of *Weſtm.* 2. cap. 26. he who recovereth in a *Rediſſeiſin*, ſhall recover double damages; and the Defendants ſhall not be bailed by a common Writ: and by the ſame Statute is given a Writ of *Poſt Diſſeiſin*, in which writ he ſhall alſo recover double damages againſt the Defendant.

And if a man do recover by *Rediſſeiſin*, and afterwards is D diſſeiſed again by him by whom the firſt Rediſſeiſin was before, he ſhall have a new *Rediſſeiſin*; and ſo one *Rediſſeiſin* after another every time he is rediſſeiſed.

And a Rediſſeiſin ſhall be maintainable againſt any of the E Diſſeiſors.

And if a man recover Land by *Aſſiſe* of *Novel Diſſeiſin* un- F to which a Common is appendant, *&c.* and after he is diſſeiſed of the Common again, he ſhall have a *Rediſſeiſin*, &c.

And if a man ſue a Writ of *Droit Cloſe*, and make Prote- G ſtation in the nature of aſſiſe of *Novel. Diſſ'*, and recover in that writ, and after he is rediſſeiſed, he ſhall not have a Rediſſeiſin: for that writ doth not lie upon an *Aſſiſe* at the Common Law, *M.* 14 *E.* 3.

And if all the Jurors in the aſſiſe be dead but one, and af- H terwards he who recovered is rediſſeiſed, *&c.* it is a queſtion whether he ſhall have a *Rediſſeiſin*, becauſe that the Statute is, *Iter Primus Juratores & alios*, &c. which he debated in *H.* 8. 5. But it ſeemeth that the Statute makes the Law, and becauſe it is a penal Statute, it ſhall be taken ſtrictly; and therefore if all the Jurors be dead but one, that he ſhall not have a *Rediſſeiſin*, becauſe he cannot be tried by the former Jurors:

for

for one Juror is not a ſufficient witneſs himſelf, to ſay that it is a Rediſſeiſin of the ſame Tenements; and therefore it ſeemeth there ought to be two Jurors to teſtifie the ſame.

I And Tenant by Statute Merchant or Staple ſhall have an aſſiſe of *Novel Diſſ.* if he be ouſted; and alſo a Rediſſeiſin if he be rediſſeiſed.

And ſo Tenant by *Elegit* ſhall have an aſſiſe of *Novel diſſ.* and a *Rediſſeiſin* if he be ouſted, by the Stat. of *Weſtm.* 2. c. 18.

Writ of Poſt Diſſeiſin.

THE Writ of *Poſt Diſſeiſin* is given by the Statute of *Weſt.* 2. *cap.* 26. and lieth where a man recovereth Lands or Tenements by a *Præcipe quod reddat*, by default or reddition, and afterwards he is ouſted again by him againſt whom he recovered, *&c.* Then he ſhall have that writ of *Poſt diſſ'*, and ſhall recover double damages, and the party ſhall be puniſhed as he ſhall be if he were attainted of *Rediſſeiſin:* But if he recover by aſſiſe of *Mortdaunceſtor* or *Juris utrum*, or in thoſe actions which paſs by Juries and Verdicts, then he ſhall have his Writ founded upon the Statute of *Merton*, cap. 3. of *Poſt Diſſeiſin.* And that writ ſhall be directed to the Sheriff as the writ of *Rediſſeiſin* ſhall be; and if the Sheriff will not execute the Writ as he ought to doe, and as he is commanded, Then he may ſue forth an *Alias* and a *Pluries vel cauſam nobis ſignifices*, &c. and if that doe not any thing, nor he return a Cauſe, Then the party may ſue an *Attachment* againſt the Sheriff directed to the Coroners, *&c.* and upon that a Diſtreſs; and the form of the Writ of *Poſt. Diſſ.* is ſuch:

Rex Vic', &c. *Monſtravit nobis* A. *quod cum ipſe in curia noſtra coram dilectis & fidelibus noſtris* W. *& ſociis ſuis Juſtic. noſtris de banco apud* E. *per breve noſtrum recuperaſſet, ſeiſinam ſuam verſus* I. *de uno meſuag. cum pertin. in* S. *per conſiderationem ejuſdem cur. idem* I. *præfat.* A. *de prædicta terra poſtmodo injuſte diſſeiſ. Et ideo tibi præcipimus quod aſſumptis*, &c. (ut in breve de rediſſ. *&c.*) *legalibus hominibus de Com. tuo accedas*, &c. (uſque ibi) *de prædicta terra poſtmodo injuſte diſſeiſit. inveneris, tunc ipſum* I, *&c.* (uſque ibi) *qua occaſione illius poſt diſſeiſ. ſuſtinuit*, &c. *juxta formam ſtatuti* Weſt. *de hujuſmodi poſt diſſeiſinam proviſi, & ſcire fac' præfat.* I. *quod inquiſitio*, &c.

And in a *Poſt. Diſſ.* the Writ ſhall not ſay, *Tam de illis qui in prima Jurata*, but in caſe where he recovereth by recognizance of the Aſſiſe, or Jury.

And if a man recover Lands or Tenements in value againſt the Vouchee in a *Præcipe quod reddat* by default, and afterwards that he is put in Execution by the Sheriff, the Vouchee doth diſſeiſe him of the ſame Lands which he ſo recovered in value, He ſhall have a *Poſt Diſſeiſin* of that Land ſo recovered in Value againſt the Vouchee. And the Writ is ſuch:

Rex Vic', &c. *Monſtravit nobis* C. *quod cum* B. *Prior de* D. *nuper in curia noſtra coram dilect. & fidel. noſtris* R. F. *& ſociis ſuis Juſticiar. noſtris de banco apud* Weſtmonaſterium *per breve petiviſſet verſus præf.* C. *ſeptem acr. prati cum pertin. in* I. *idémque* C. R. *de* S. *inde placito prædict. vocaſſet ad warrant. ac per defaltam, quam idem* R. *poſtea fecit in eadem Cur. conſiderat. fuiſſet, quod præd. Prior recuperaret ſeiſinam ſuam verſus præf.* C. *de præd. placito, quod idem* C. *haberet de prato prædict.* R. *de* S. *ad valenciam prædict. ſept. acr. prati, cujus quidem conſiderationis prætextu ſeptem acr. prati cum pertin. de prato prædict.* R. *de* S. *in* G. *præf.* C. *per tunc Vic. noſtrum* Glouc. *virtute cujuſd. brevis noſtri de judic. ſibi in hac parte directi aſſign. fuer. præd.* R. *de* S. *præfat.* C. *de prædicto prato ſibi (ut præmittitur) aſſignat. poſtmodum injuſte diſſeiſivit. Et ideo tibi præcipimus, quod aſſumptis tecum,* &c. 12. *tam militibus quam aliis liberis & legalibus hominibus de Com. tuo, in propria,* &c. *accedas ad prædict. pratum eidem* C. *aſſign. & per eorum ſacram. diligenter inde fac. inquiſit. Et ſi ipſum* C. *per prædict.* R. *de prædict. prato præfat.* C. *aſſign. poſtmodum injuſte diſſeiſ. inveneris, tunc ipſum* R. *capias; & in priſona noſtra ſalvo cuſtodir. fac. ita quod à priſona illa nullo modo deliberetur ſine mandato noſtro ſpeciali, & ipſum* C. *de prædict. prato ſibi aſſign. reſeiſiri, & damna ſua in duplum, quæ occaſione illius poſt def. ſuſtinuit per ſacrament. prædict.* 12. *taxari, & de terris & catallis prædictis* R. *in baldriva tua ſine dilatione fieri, & idem* C. *habere fac. juxta formam ſtatuti de hujuſmodi Poſt diſſeiſin. proviſ. Et ſcire fac. præfat.* R. *&c. Teſte,* &c.

And if the Defendant make the default at the *Scire facias* returned, then the Sheriff ſhall take the Inqueſt by default, and the Proceſs againſt the Jury ſhall be by precept from the Sheriff to his Bailiff, *&c.* to ſummon twelve, *&c.* D

And if a man recover in a *Scire facias* upon a fine, or upon a Recovery had before by default of the Tenant, he ſhall have a *Poſt Diſſeiſin* againſt the Tenant, if he be afterwards ouſted of the ſame Land, *quod ve. M.* 15 *H.* 7. E

And if a man be convict before the Sheriff upon a *Reſeiſin*, and *Poſt Diſſeiſin*, then he ſhall not be delivered out of priſon without the King's ſpecial Command, and then

he ought to ſue a *Certiorari* to remove the Record into the King's Bench, and there to agree with the King for his Fine. And thereupon he ſhall have a Writ to the Sheriff to deliver him out of priſon; and the form of the Writ to remove the Record is ſuch:

Rex Vic', &c. *Ex parte* Henrici *de* D. *capti & detenti in priſona noſtra* Staff. *pro quadam rediſſeiſina per ipſum* Iſabell. *qua fuit uxor* Ric. *de* C. *de medietate unius meſuag. cum pertin. in* C. *fatt. ut dicit. unde coram te & cuſtod. placitor. coron. noſtræ in Com. tuo per inquiſitionem inde apud* C. *per breve noſtrum fatt. convict. fuit: Nobis eſt ſupplicat. ut cum ipſe eidem* Iſabel. *de damn. ſibi in hac parte adjudicat. jam ſit ſatisfatt. & parat. ſit nobiſcum finem pro eo quod ad nos pertinet in hac parte, juxta formam ſtatuti de communi conſilio regni noſtri inde proviſ. facere: Velimus ipſius deliberationi provider. nos ut eidem* H. *quod juſtum fuerit inde facere valeamus, volent. ſuper record. & proceſ. inquiſitionis præd. certiorari: Tibi præcipimus, quod ſi judic. inde reddit. ſit tunc record. & proceſs. inquiſit. præd. cum omnibus ea tangent. nobis ſub ſigillo tuo diſtincte & apert. mittas, ita quod*, &c. *ubicunque*, &c. *ut ulter. ſuper hoc fieri fac. quod de jure*, &c. *faciend'*, &c. *Teſte*, &c.

A And that Writ of *Poſt Diſſeiſin* ought to be brought by thoſe who firſt recovered, or by ſome of them, and of the ſame Land which was recovered, or of part thereof, or againſt thoſe, or ſome of them againſt whom the recovery was.

But if a man recover by a *Præcipe quod reddat*, and after he is diſſeiſed by him againſt whom he recovered, and the Diſſeiſor doth make Feoffment, and taketh back an eſtate to him and another. He who firſt recovered ſhall have a *Poſt Diſſeiſin* againſt him and his Joint tenant, as it ſeemeth, and he ſhall be puniſhed by the Statute if it be found againſt him.

But if he who loſeth the Land by default or Reddition in a *Præcipe quod reddat*, do after diſſeiſe him who recovered, and maketh a Feoffment in Fee unto another, or for life, it ſeemeth he who recovered ſhall have a *Poſt Diſſeiſin* againſt him who diſſeiſed him again, although he be not Tenant of the Land; for in a Writ of *Poſt Diſſeiſin*, The Demandant ſhall not have Judgment to recover the Land, *&c.* But the Sheriff ſhall put and reſtore the Plaintiff to his Poſſeſſion, if he find the diſſeiſin, *&c.* and ſhall take the Defendant, and keep him in priſon until, *&c.*

And it ſeemeth, That *Non-tenure* is no plea in a Writ of *Poſt Diſſ.* for the Defendant, but he ought for to anſwer the Diſſeiſin, *&c.* when he comes in upon the *Scire*

facias, &c. And if he make default upon the *Scire facias*, returned, the Sheriff ſhall take the Inqueſt: *Tamen Quære.*

Writ of Entrie in the nature of Aſſiſe, which is called, Entrie in de Quibus.

9 H. 5. 12. If this Writ be brought againſt a Parſon, he ſhall not have Aid of the Patron and Ordinary.

A Writ of *De quibus* which is brought in the place of an Aſſiſe is, where a man is diſſeiſed of any Lands, Tenements, or Rents, whereof he hath an eſtate in fee, then he may ſue that Writ, and the Writ is ſuch: C

Rex Vic', &c. *Præc.* A. *quod juſte redd.* B. *unum meſuag. cum pertin. in* D. *quod clamat eſſe jus & hæreditate ſuam, de quo idem* A. *injuſte & ſine judicio diſſeiſivit prædict.* B. *poſt primam transfret. dom.* H. *Regis in* Vaſconiam, *&c. ut dic. & niſi*, &c.

And if a man bring a Writ of Diſſeiſin made to his Anceſtor, then the Writ is of another form, thus:

Præcipe A. *quod juſte*, &c. *redd.* B. *unum meſuag. cum pertin.* D *in* D. *quod clamat eſſe jus & hæreditatem ſuam, & de quo idem* A. *injuſte & ſine judicio diſſ.* C. *patrem prædict.* B. *vel alium anteceſſorem prad.* B. *cujus hæres ipſe eſt poſt primam transfret. domini regis*, &c. *ut dic.* Vel ſic, *per quod clamat*, &c. *& in quod*, &c. *niſi per* C. *quod illud ei dimiſit, quod injuſte* E. *patrem, vel prædict.* B. *&c. poſt primam*, &c.

And in the *Per* and *Cui* thus:

Quod clamat, &c. *& in quod*, &c. *niſi per* C. *cui* D. *illud dimiſit, qui inde injuſte & ſine judicio*, &c. *prædict.* E. *patrem prad.* B. *cujus hæres ipſe eſt, vel prædict.* B. *&c. poſt prim.* &c.

And in the *Poſt* thus:

Quod clamat, &c. *in quod*, &c. *niſi poſt diſſeiſin. quam* D. *injuſte*, &c. *fecit* E. *patri vel al. anteceſſ. prad. cujus hæres ipſe eſt, vel præfat.* B. *poſt primam transfretationem*, &c. *ut dicit, & unde quæritur*, &c. *Et niſi*, &c.

And it appeareth by theſe Writs, that although he bring a Writ of a Diſſeiſin made to himſelf, or of a Diſſeiſin made to his Anceſtors, that in both caſes the Writ ſhall be, *Quod clamat eſſe jus & hæreditatem ſuam.*

And if Tenant for life, or Tenant in tail be diſſeiſed, they E may ſue a Writ for Diſſeiſin *de Quibus*, &c. but in that Writ it ſhall not be ſaid, *Quod clamat eſſe jus ſuum & hæreditat. ſuam*, and in his Count he ſhall ſet forth the eſpecial eſtate, *&c.*

And an Abbat, or a Prior, or Mr. of an Hoſpital, or a Biſhop ſhall have a Writ *de quibus* upon a diſſeiſin of their Predeceſſors of Lands, Tenements, or Rent, and the Writ ſhall be ſuch:

Præcipe

Præcipe A. *quod juſte*, &c. *red. Priori de* N. *unum meſuagium quod clam. eſſe jus Eccleſ. ipſius Prioris S.* Mariæ *de* N. *& in quod idem* A. *non habet ingreſſ. niſi poſt. diſſ. quam* L. *inde injuſte & ſine judicio fecit* R. *quondam Priori de* N. *prædeceſſ. prad. Prioris poſt primam*, &c. *ut dic. & unde queritur*, &c.

And if it be a Rent then thus:

Rex Vic. præcipe I. M. *quod juſte*, &c. *redd. Priori de* C. *tres ſolid. reddit. cum pertin. in* D. *quod clam. eſſe jus Eccleſiæ ipſius Prioris* S. Nic. *de* C. *Et de quibus* W. D. *injuſte & ſine judic. diſſeiſivit* W. *quondam Priorem de* C. *præd.* &c.

G And the Aunt and the Neece ſhall joyn in the writ, upon a Diſſeiſin made to the father of the one, the grandfather of the other.

H And a writ of *Entrie ſur diſſeiſin* made unto his Anceſtors of a ſtream lieth, and the writ ſhall be, *Præcipe quod reddat unum gurgitem*, and in his Count he ſhall alledge the Eſplees in taking of Fiſhes.

I And ſo he ſhall have a writ of *Entrie in de quibus* upon the diſſeiſin of a paſſage, *quod ve. H. 8. E. 3.*

K And if the diſſeiſor enfeoffl the King, who enfeoffeth another in Fee, the Diſſeiſee ſhall have a writ of *quibus* upon the Diſſeiſin againſt the King's Feoffee in the *Poſt*, &c. 12 E. 3. 7. 23 E. 3. Fitz. entrie 11.

A And if Tenant in tail bring a writ of *Quibus* upon a Diſſeiſin made to himſelf, he may count that he was ſeiſed in his Demeſn as of freehold, without ſhewing any particular eſtate, or how the eſtate began, or he may count upon the ſpecial matter and ſhew the gift in tail, *quod ve. P. 33 H. 6.* 1 Ma. Dyer. 101.

B And a man may have a writ of *Entrie* of *Quibus*, upon a Diſſeiſin of a common, *Quod reddat paſtur. ad decem boves*, &c. *quod ve. P. 4 E. 3.*

C And a man ſhall not have a writ of *Entrie* in the *Poſt*, where he may have it within the degrees, in the *Per*, or in the *per* and *cui*. 14 H. 4. 10. *Auckford* 24 E. 3. 70.

D If a man diſſeiſe the father of a marſh, and maketh the ſame meadow, and the father dieth, the Son and heir ſhall have a writ of *de quibus* upon a Diſſeiſin made to his father of that meadow, and by the writ he ſhall demand the lands; by the name of a meadow, and not by the name of a marſh. Yet no *Præcipe* will lie of a marſh becauſe properly it cannot be rendred 13 E. 3. Br. demand. 23. 39 H. 6. 8 *ve.*

And ſo if it be land covered with water, and he is diſſeiſed thereof, and the diſſeiſor make it meadow, the diſſeiſee ſhall have a writ of *Quibus*, and by his writ demand the meadow, and ſuppoſe that he was diſſeiſed of meadow by the writ, *&c.* 39 H. 6. 8. he ſhall have a *Præcipe* by the name of a houſe.

And ſo if a man be diſſeiſed of land, and he build a houſe upon the ſame, he ſhall ſuppoſe the diſſeiſin to be of a houſe, *&c. Quære* of this.

And

facias, &c. And if he make default upon the *Scire facias*, returned, the Sheriff ſhall take the Inqueſt: *Tamen Quære.*

Writ of Entrie in the nature of Aſſiſe, which is called, Entrie in de Quibus.

9 H. 5. 12. If this Writ be brought againſt a Parſon, he ſhall not have Aid of the Patron and Ordinary.

A Writ of *De quibus* which is brought in the place of an Aſſiſe is, where a man is diſſeiſed of any Lands, Tenements, or Rents, whereof he hath an eſtate in fee, then he may ſue that Writ, and the Writ is ſuch: C

Rex Vic', &c. *Præc.* A. *quod juſte redd.* B. *unum meſuag. cum pertin. in* D. *quod clamat eſſe jus & hæreditate ſuam, de quo idem* A. *injuſte & ſine judicio diſſeiſivit prædict.* B. *poſt primam transfret. dom.* H. *Regis in* Vaſconiam, *&c. ut dic. & niſi*, &c.

And if a man bring a Writ of Diſſeiſin made to his Anceſtor, then the Writ is of another form, thus:

Præcipe A. *quod juſte*, &c. *redd.* B. *unum meſuag. cum pertin.* D *in* D. *quod clamat eſſe jus & hæreditatem ſuam, & de quo idem* A. *injuſte & ſine judicio diſſ.* C. *patrem prædict.* B. *vel alium anteceſſorem prad.* B. *cujus hæres ipſe eſt poſt primam transfret. domini regis*, &c. *ut dic.* Vel ſic, *per quod clamat*, &c. *& in quod*, &c. *niſi per* C. *quod illud ei dimiſit, quod injuſte* E. *patrem, vel prædict.* B. *&c. poſt primam*, &c.

And in the *Per* and *Cui* thus:

Quod clamat, &c. *& in quod*, &c. *niſi per* C. *cui* D. *illud dimiſit, qui inde injuſte & ſine judicio*, &c. *prædict.* E. *patrem prad.* B. *cujus hæres ipſe eſt, vel prædict.* B. *&c. poſt prim.* &c.

And in the *Poſt* thus:

Quod clamat, &c. *in quod*, &c. *niſi poſt diſſeiſin. quam* D. *injuſte*, &c. *fecit* E. *patri vel al. anteceſſ. prad. cujus hæres ipſe eſt, vel præfat.* B. *poſt primam transfretationem*, &c. *ut dicit, & unde quæritur*, &c. *Et niſi*, &c.

And it appeareth by theſe Writs, that although he bring a Writ of a Diſſeiſin made to himſelf, or of a Diſſeiſin made to his Anceſtors, that in both caſes the Writ ſhall be, *Quod clamat eſſe jus & hæreditatem ſuam.*

And if Tenant for life, or Tenant in tail be diſſeiſed, they E may ſue a Writ for Diſſeiſin *de Quibus*, &c. but in that Writ it ſhall not be ſaid, *Quod clamat eſſe jus ſuum & hæreditat. ſuam*, and in his Count he ſhall ſet forth the eſpecial eſtate, *&c.*

And an Abbat, or a Prior, or Mr. of an Hoſpital, or a Biſhop ſhall have a Writ *de quibus* upon a diſſeiſin of their Predeceſſors of Lands, Tenements, or Rent, and the Writ ſhall be ſuch:

Præcipe

Præcipe A. *quod juſte*, &c. *red. Priori de* N. *unum meſuagium quod clam. eſſe jus Eccleſ. ipſius Prioris S.* Mariæ *de* N. *& in quod idem* A. *non habet ingreſſ. niſi poſt. diſſ. quam* L. *inde injuſte & ſine judicio fecit* R. *quondam Priori de* N. *prædeceſſ. prad. Prioris poſt primam*, &c. *ut dic. & unde queritur*, &c.

And if it be a Rent then thus:

Rex Vic. præcipe I. M. *quod juſte*, &c. *redd. Priori de* C. *tres ſolid. reddit. cum pertin. in* D. *quod clam. eſſe jus Eccleſiæ ipſius Prioris* S. Nic. *de* C. *Et de quibus* W. D. *injuſte & ſine judic. diſſeiſivit* W. *quondam Priorem de* C. *prad.* &c.

G And the Aunt and the Neeee ſhall joyn in the writ, upon a Diſſeiſin made to the father of the one, the grandfather of the other.

H And a writ of *Entrie ſur diſſeiſin* made unto his Anceſtors of a ſtream lieth, and the writ ſhall be, *Præcipe quod reddat unum gurgitem*, and in his Count he ſhall alledge the Eſplees in taking of Fiſhes.

I And ſo he ſhall have a writ of *Entrie in de quibus* upon the diſſeiſin of a paſſage, *quod ve. H. 8. E. 3.*

K And if the diſſeiſor enfeoffi the King, who enfeoffeth another in Fee, the Diſſeiſee ſhall have a writ of *quibus* upon the Diſſeiſin againſt the King's Feoffee in the *Poſt*, &c. 12 E. 3. 7. 23 E. 3. Fitz. entrie 11.

A And if Tenant in tail bring a writ of *Quibus* upon a Diſſeiſin made to himſelf, he may count that he was ſeiſed in his Demeſn as of freehold, without ſhewing any particular eſtate, or how the eſtate began, or he may count upon the ſpecial matter and ſhew the gift in tail, *quod ve. P. 33 H. 6.* 1 Ma. Dyer. 101.

B And a man may have a writ of *Entrie* of *Quibus*, upon a Diſſeiſin of a common, *Quod reddat paſtur. ad decem boves*, &c. *quod ve. P. 4 E. 3.*

C And a man ſhall not have a writ of *Entrie* in the *Poſt*, where he may have it within the degrees, in the *Per*, or in the *per* and *cui*. 14 H. 4. 10. *Auckford* 24 E. 3. 70.

D If a man diſſeiſe the father of a marſh, and maketh the ſame meadow, and the father dieth, the Son and heir ſhall have a writ of *de quibus* upon a Diſſeiſin made to his father of that meadow, and by the writ he ſhall demand the lands; by the name of a meadow, and not by the name of a marſh. Yet no *Præcipe* will lie of a marſh becauſe properly it cannot be rendred 13 E. 3. Br. demand. 23. 39 H. 6. 8 *ve.*

And ſo if it be land covered with water, and he is diſſeiſed thereof, and the diſſeiſor make it meadow, the diſſeiſee ſhall have a writ of *Quibus*, and by his writ demand the meadow, and ſuppoſe that he was diſſeiſed of meadow by the writ, *&c.* 39 H. 6. 8. he ſhall have a *Præcipe* by the name of a houſe.

And ſo if a man be diſſeiſed of land, and he build a houſe upon the ſame, he ſhall ſuppoſe the diſſeiſin to be of a houſe, *&c. Quære* of this.

And

And the Writ of *Quibus* upon Diſſeiſin of an Office is ſuch: *Rex Vic.* &c. *Præcipe* H. *Abb. de* Burg. *S.* Petri, *quod juſte*, &c. *reddat* B. *officium Serjeantiæ in Abbatia de* Burgo *S.* Petri, *& redditum* 24. *panum, quadragint. lagenar. ceruſiæ, & ſex ferculorum cum pertin. in Vill. de* Burgo *S.* Petri, *quæ clamat eſſe jus & hæreditatem ſuam, & de quibus idem Abbas injuſte & ſine judicio diſſeiſ.* &c.

And he who cometh in unto any Land by Record, or by Election, or by Succeſſion, or by Diſſeiſin, the Writ ſhall be brought againſt ſuch perſon always in the *Poſt*.

Writ of Dum fuit infra ætatem.

A Writ of *Dum fuit infra ætatem* lieth; where an Infant maketh a Feoffment in Fee of his Lands, or for life, or a gift in tail, when he cometh of full age, he may have that writ to recover thoſe lands or tenements, which were ſo aliened by him, *&c.* And within age, he may enter into the land, and take it back again, and by his Entry, he ſhall be remitted to his Anceſtors right; but yet he ſhall not maintain that writ, until he be of full age of 21 years, for the words of the Writ do ſo ſuppoſe, *Dum fuit infra ætatem*, by which it appeareth that he is not within age at the time of the writ, *&c.* and alſo the writ is ſuch; *Qui plenæ ætatis eſt, ut dicit*, by which it appeareth that he ought to be of full age, when that he bringeth that writ; and the writ is ſuch:

39 H. 6. 42. In 46 E. 3. 24. A *Dum fuit infra ætatem* was admitted of a rent, and yet by ſome the gift is void; but the delivery of the deed is not void.

Rex Vic. &c. *Præcipe* A. *quod*, &c. *redd.* B. *qui plenæ ætatis eſt ut dicit, duo meſuagia*, &c. *quæ idem* B. *ei dimiſit dum infra ætatem fuit, ut dicit*, &c. *Et niſi facer*, &c. And ſo in the *Per*, *In quæ idem* A. *non habet ingreſſ. niſi per* C. *cui præd.* B. *illa dimiſit.* And in the *Poſt* thus, *In quod*, &c. *niſi poſt dimiſ. quam præd.* B. *dum inf. ætat. fuit inde fecer.* W. *ut dic. & unde queritur, & niſi*, &c. But that clauſe, *Qui plenæ ætatis eſt*, ſhall not be put in the writs of *Per*, *Cui*, or *Poſt*, but onely in the firſt writ, by Grant made by the Demandant to the Tenant.

And if a man bring this writ upon the Alienation of his Anceſtors, then this clauſe; *qui plenæ ætatis eſt*, ſhall not be in the writ, and yet the Infant ſhall have a *Dum fuit infra ætatem* of a ſeiſin, and Alienation of his Anceſtor during his nonage, and the writ ſhall be ſuch:

Præcipe A. *quod*, &c. *redd.* B. *unum meſuag. cum pertin. quod clam. eſſe jus*, &c. *& in quod idem* A. *non habet ingreſſ. niſi per* C. *patrem, vel alium anteceſſ. præd.* B. *cujus hæres ipſe eſt quod illud ei dimiſit dum infra ætatem fuit*; Vel

ſic, *Quod clam.* &c. *& in quod,* &c. *niſi per* C. *cui* D. *avia prædict.* B. *cujus,* &c. *dum eadem* D. *&c.* And in the *Poſt, Quod clam.* &c. *& in quod,* &c. *poſt dimiſ. quæ* D. *amita, vel conſanguinea prædict.* B. *cujus hæres ipſe eſt, dum eadem* D. *&c. inde fecit* H. *ut dic. & unde queritur,* &c.

K. And if two Infants be Joynt-tenants, and they alien the Land during their non-age, at their full age they ought not to ſue forth ſeveral writs of *Dum fuit infra ætatem,* becauſe their non-age is the cauſe of the action which is ſeveral, for the non-age of the one, is not the non-age of the other, nor the alienation of the one, the alienation of the other. 24 H. 6. 31. *Davers ac.* 19 H. 6. 45. *ac. de cui in vita.*

And if the husband and wife alien the wives lands, during the non-age of the husband and wife, the wife at her full age after the death of the husband, ſhall have *Dum fuit infra ætatem* for ſuch alienation, *M.* 14. *E.* 3.

L. But if the husband were of full age, and the wife within age, and they both alien the wives Lands, and then the husband dieth, it is a queſtion whether the wife ſhall have a *Dum fuit infra ætatem,* and I conceive that ſhe ſhall have a *Dum fuit infra ætatem,* or a *Cui in vita* as ſhe pleaſeth, for when they joyn in a Feoffment of the Land, it ſhall be ſaid the Feoffment of the wife until ſhe do diſagree, for if the husband and wife make a gift in tail, or a leaſe for life of the wives Lands rendring rent, if the husband dieth, the reverſion is onely in the wife, and ſhe may accept the rent, and the ſame ſhall bind her and her heirs; and then if ſhe will not accept the rent, but, becauſe ſhe was within age at the time of the Feſt, ſhe will bring a *Dum fuit infra ætatem,* it ſeemeth ſhe ſhall not be received ſo to do, for by that ſuit ſhe affirmeth that ſhe made the ſeoffment, and then it ſhall not be ſaid the ſeoffment of the husband onely, but the ſeoffment of the wife alone after the death of the Husband, if ſhe affirm that to be her ſeoffment; and by the *Dum infra ætatem,* ſhe doth affirm the ſame, and that ſhe made the ſeoffment during the coverture; and on the other ſide it may be ſaid, That ſhe doth not affirm the ſame to be a lawfull ſeoffment made by her. And alſo by the ſeoffment of the husband, the entry of the wife ſhall be taken away; but by the feoffment of the wife during her non-age, his entry ſhall not be taken away: and therefore *Quære* the Law, *&c.*

Writ of Cui in vita.

THE Writ of *Cui in vita* lieth, where the Husband doth alien in Fee the right of Inheritance of his Wife, or the Freehold of his wife by Feoffment, or grant for life, or in tail; Then after the death of the Husband, the wife ſhall have *Cui in vita contradicere non potuit:* And the writ lieth where the wife hath an eſtate for life, or in tail, and the husband alieneth that Eſtate and title of the wives, then the wife after his death ſhall have that writ.

30 H. 6. 38. Priſ. contr. 16 H. 7. 8. 9.

And if the wife do not bring the writ during her life, then if ſhe had an Eſtate in Feeſimple, her Heir ſhall have a Writ which is called *Sur cui in vita*, after her death. And if the wife have an Eſtate in Tail, and her Husband alien, and make a Feoffment of that Eſtate; then if the wife dieth, her heir ſhall have a writ of *Formedon* in the Deſcender to recover that Eſtate, and not a writ of *Sur cui in vita*; for thoſe writs of *Cui in vita*, and *Sur cui in vita*, are writs founded upon the Common Law, and of an Eſtate in Feeſimple; for there was not other Eſtate at the Common Law which could deſcend, but a Feeſimple: For if the Lord by the Common Law giveth Lands to hold of him, if the Tenant dieth without heir, he ſhall have a writ of Eſcheat.

And ſo by the common Law. If a man give Lands to one and the Heirs of his body, *&c.* if he dieth without Heir of his body, the Lord by the common Law ſhall have a *Formedon* in the Reverſion of that Eſtate, for want of iſſue of him to whom the Gift was made; but yet the Donor ſhall have an Eſtate in Feeſimple, as I think, and that appeareth by the Statute, which ſaith, *De tenentibus quæ multoties dantur ſub conditione*; by which words it appeareth, That the Gift had a Condition implied therein; ſo that it ſhall revert for want of ſuch iſſue, and by reaſon of the Tenure reſerved, *&c.* but it doth not appear by the Statute that he ſhall have an Eſtate tail of other nature than the Eſtate which was by the common Law, and the form of the Writ of *Cui in vita* is ſuch:

A ſeme ſole made a Deed of Feoffment, but always after continued ſeiſin of the Land, after the took Husband, who delivered the Land to the party to whom the Deed was made, the Feme may have a *Cui in vita*; becauſe ſhe did not execute the Feoffment by delivery of the Land; 4 E. 2. *Fitz. Cui in vita* 21. Plo. Com. 29. & 235. 12 E. 4. 3.

Rex *Vic.* &c. *Præcipe* A. *quod juſte*, &c. *reddat* B. *quæ fuit*

mesne D. *unum mes.cum pertin. in* N. *quod clamat esse jus & hared. suum. Et in quod idem* A. *non habet ingressum nisi per prædict.* D. *quondam virum ipsius* B. *qui illud ei dimisit, cui in ipsa vita sua contradicere non potuit, ut dicit.*

D And if she hold in Frankmarriage, and the husband alien, then the writ shall be, *Quod clamat jus esse & maritag. suum, & in quod idem* A. *&c. nisi per* C. *cui præd.* D. *quond. vir ipsius* B. *illud,* ut supra.

And this writ of *Cui in vita* may be in the *Per*, *Cui* and *Post*, and in the *Post* the writ shall be:

Et in quod idem A. *non habet ingressum, nisi post dimissionem, quam p.d.* D. *quondam vir ipsius* B. *cui ipsa in vita,* &c. *non potuit, inde fecit, ut dic. & unde queritur,* &c. *& nisi,* &c. Vel sic, *Quod clam. esse jus suum de dono* S. *qui ipsam* B. *inde feoffavit, & in quod,* &c.

E And if the husband and wife purchase joyntly, and the husband alieneth all in fee and dieth, the wife shall have a writ in this form: 11 Ass 11. Br. Ass. 167. 16 H. 7. 8. 48 E 3. 8. 39 H. 6. 38. &c.

Quod clamat esse jus suum de dono I. *qui ipsam* B. *& præd.* C. *quondam virum suum inde feoffavit, & in quod,* &c.

F And if she have an estate to her and the heirs of her body, and of the body of her husband begotten, then the Writ is; *Quod clamat tener. sibi & hared. de corpore suo, & de corpore præd.* D. *quondam viri sui exeuntibus, ex dimissione* I. Vel

G sic, *quod clamat esse jus suum ex dimissione quam* I. *inde fecit eidem* B. *& præd.* D. *quondam viro suo, & hared. ipsius* B. and there the husband shall have a joynt estate with the wife for the term of her life. Note the Statute of *West.* 2. c. 3. extends to give this account, as well for Recover. before the Statute, as after 5 E. 2. *Cui in vita* 23.

H And if the wife claim the Lands in dower, then the writ shall be:

Quod clamat esse dotem suam ex dono D. *primi viri, vel secundi viri sui, Et in quod,* &c. *nisi per præd.* C. *secundum virum ipsius* B. *vel tertium virum, qui illud ei dimisit,* &c.

And if she hold for term of life of dimission, then the writ shall be:

Quod clamat tenere ad vitam suam ex dimissione quam I. *inde fecit eidem* B. *& præs.* D. *quond. viro suo ad vitam eorundem* B. *& D.*

I And if the husband and wife lose by default the Wives Lands, after the death of the husband, she shall have a *Cui in vita* for to recover those lands so lost by default: but if a man recover by a *Cessavit.* Lands of the wife by default of the husband and the wife upon a Cesser during the marriage had betwixt them; if the husband dieth, the Wife shall not have a *Cui in vita* upon that recovery, *quod vi. Tri.* 4 *E.* 2. 2 E. 4. 13. Note the case of *West.* 9 E 4. 16.

It

If the husband and wife, and a third perſon purchaſe joyntly, and the husband alieneth all in Fee and dieth, the wife as itſeemeth ſhall have a *Cui in vita* of a moiety, being the third Joyntenant; but it ſeemeth ſuch alienation is a ſeverance of the Joynture, *quod vi. Paſc. 16. E. 3. Cui in vita* in the Abridgm. and if the husband alien the Corody in Fee, which the wife hath, it ſhall not be any diſcontinuance, but the wife may demand her Corody.

9 E. 4. 16. If the husband and wife loſe by default in waſte, no *Cui in vita*; the reaſon, is becauſe no land is in demand in *&c.* Writ 36 E. 3. She ſhall have a *Cui in vita* of no part during the others life.

If the husband and wife exchange the Land of the wife for other Lands, if the wife agree unto the exchange after the husband's death, ſhe ſhall not have a *Cui in vita*. And if the wife do accept of the parcel of the Land in dower, of which ſhe hath a *Cui in vita*, by that acceptance ſhe ſhall be barred in her *Cui in vita* of the reſidue.

36 E. 3. She ſhall have a *Cui in vita*, that is of a purchaſe during the Coverture, that he ſhall not have a *Cui in vita* after the death of the others; but for *&c.* he may. 10 E. 4. 2.

2 E. 2. *Cui in vita*, 19. 8 E. 2. *ibid.* 25.

8 E. 2. *Cui in vita* 28. The husband gave the Land of the wife to I. who gave other Land to the husband and wife, and to her ſon of the husband, and to the heirs of him who ſurvived; and that was pleaded by Exchange in Bar, in a *Cui in vita*; and holden no Bar. 20 E. 3. *Cui in vita*, 10.

So if ſhe accept a Rent where ſhe and her Husband make a feoffment. 21 E. 6. 24.

19 H. 6. 45. 21 E. 3. 9.

If husband and wife be Joynt-tenants before the Coverture, and the husband alieneth all the land and dyeth, ſhe ſhall not have a *Cui in vita* but for a moiety. But if they be joynt-purchaſors during the Coverture, and he alien all the land and dyeth, his wife ſhall have a *Cui in vita* of the whole land, becauſe that during the Coverture as to purchaſe, they are but one perſon in Law. And the Writ of *Sur Cui in vita* lieth for the heir of the wife, where the husband alieneth all the land in fee, and the writ is ſuch:

Prec. A. *quod*, &c. *reddat* B. *unum meſſ. cum pertin. in* N. *quod clamat eſſe jus & hæreditatem ſuam, & in quod*, &c. *niſi per* C. *quond. virum* D. *matris prad.* B. *cujus hæres ipſe eſt, quod illud ei dimiſit, cui ipſa* D. *in vita ſua contradicere non potuit, ut dicit, niſi*, &c.

And in the *Per* and *Cui* thus:

Quod clamat, &c. *Et in quod*, &c. *niſi per* C. *cui* D. *quond. vir.* E. *matris, amitæ, ſororis vel conſang. prad.* P. *cujus hæres*, &c. *illud ei dimiſit, cui ipſa* D. *in vita*, &c.

And in the *Poſt* the writ ſhall be thus:

Niſi poſt dimiſſionem quam I. *quondam vir* C. *matris prad.* B. *& amitæ prad.* M. *cujus hæres ipſe eſt, cui ipſa* C. *in vita ſua contradicere*

contradicere non potuit, inde fecit, ut dicit, & unde queritur, &c. *& niſi,* &c.

D And by that writ appeareth, that the Aunt and the Neece may joyn in a writ of *Sur cui in vita*, upon an alination made by the husband, their common Anceſtor; or upon a Recovery had againſt the Husband and wife, who was the common Anceſtor to them, if the ſecond husband alien the lands of the wife, and he and his wife die, the iſſue of the wife and the firſt husband ſhall have a *Sur cui in vita* againſt the Alienee; although the ſecond husband be living, if he were not entitled to be Tenant by the curteſie; but if the ſecond husband be entitled to be Tenant by the curteſie, then the iſſue of the firſt husband ſhall not have a *Sur cui in vita* during the life of the ſecond husband.

8 E. 2. *Cui in vita* 26. 44 E. 1. Fitz. lib. 30. 5 E. 3. 37. *Cui in vita*

F And a *Sur cui in vita* was maintainable of a rent *M.* 12. G *E.* 3. And in a *Cui in vita*, the grant or gift alledged in the writ is not traverſable.

13. 49 E. 3. 29 *Quere.* But 50 E. 3. 6. Act. 5 E. 2. *Cui in vita* 25.

H If a man giveth lands to a woman to marry her, and they marry, and afterwards the husband alieneth the lands and dieth, the wife ſhall have a *Cui in vita* of thoſe lands given her by her husband.

Writ de ſine aſſenſu Capituli.

I THE Writ of *Sine aſſenſu Capituli* lieth, where a Dean, Biſhop, Prebendary, Abbat, Prior, or Maſter of an Hoſpital alien the lands which they have in the right of their Houſe, Abby, or Priory, without the aſſent of their Covent, or their Chapter or Brethren, *&c.* He who is the Succeſſor ſhall have K that writ, which is ſuch, and may be in the *Per*, *Cui* or *Poſt.*

Rex Vic. &c. *Præcipe* A. *quod*, &c. *reddat.* B. *Epiſcopo de* S. *unum meſſ. cum pertin. in* N. *quod clamat eſſe jus Eccleſ. ipſius Epiſcopi* S. Mariæ *de* S. *& in quod idem* A. *non habet ingreſſum niſi per* H. *cui* R. *quondam Epiſcop. de* S. *prædeceſſ. prædict. nunc Epiſc. illud dimiſit ſine aſſenſu & voluntate capituli ſui, ut dicit,* &c.

And for a Maſter of an Hoſpital, the writ ſhall be:

Rex Vic. &c. *Præcipe* A. *quod juſte*, &c. *reddat.* B. *cuſtod. Hoſpit.* S. Mariæ Magd. Linc. *unum meſ. quod clamat eſſe jus hoſpitalis ſui prad. & in quod idem* A. *non habet ingreſſ. niſi per* D. *quondam cuſtod. hoſpitalis prædict. qui illud ei dimiſit ſine aſſenſu & voluntate fratrum & ſororum ejuſdem hoſpitalis, ut dicit, & niſi,* &c.

And for a Prebend the form of the Writ is ſuch:

Rex

Rex Vic. &c. *Præcipe* A. *quod*, &c. *redd.* B. *Prebendario Prebendæ de* D. *in Eccleſ. B.* Petri Ebor. *unum meſ.* &c. *in* A. *quod clamat eſſe jus Prebend. ſuæ. Et in quod*, &c. *niſi poſt dimiſſionem, quod* R. *de* B. *nuper Prebendarius prebend. prædict. predeceſſ. Prebend. prædict. ſine licentia & voluntate Archiepiſcopi* Ebor. *decani & capituli Eccleſ. prædict. inde fecit* W. *de* R. *ut dicit, & unde queritur*, &c.

And for the Prior of St. *John* of *Jeruſalem* in *England*, lieth a Writ upon an Alienation of his predeceſſ. thus:

Quod reddat B. *Priori Hoſpit. S.* Joh. Jeruſal. *in* Anglia, &c. *quod clamat. eſſe jus Eccleſ. ſuæ S.* Joh. Jeruſal. *in* Anglia, *& in quod non habet*, &c. *niſi per* W. *quondam Priorem S.* Jo. &c. *predeceſſ. præd. nunc Prioris, qui illud dimiſit ſine aſſenſu capituli, ut dicit, & niſi*, &c.

And the Proceſs in theſe writs are Summons, *Grand Cape*, and *Petit Cape*.

And hereby it appeareth, that a Prebendary ſhall have a writ *De ſine aſſenſu Capituli*; by which it ſeemeth that he hath a Feeſimple in the Prebend; and yet one Prebendary may enter upon the alienation of his Predeceſſor; as a Parſon ſhall do upon the alienation of his Predeceſſor.

[195] And alſo a Prebendary ſhall have a *juris utrum* upon an alienation of his Predeceſſor, by which it ſeemeth he hath not a greater ſtate than as Parſon: But yet it ſeems reaſonable that he have this writ, *De ſine aſſenſu Capituli*; becauſe that he, the Biſhop, and the Chapter are but one body, and are as one body, although the poſſeſſions be ſevered and divided amongſt them; and every one of them is enabled to bring an action of his own poſſeſſion in his own name.

And a man may have a writ of *Sine aſſenſu Capituli* againſt the ſame perſon by ſeveral Precipes, in the writ of Lands in ſeveral Towns, and upon demiſes of his ſeveral Predeceſſors, and it ſhall be good. *Quod vi. H.* 33 *E.* 3.

And if the Prebendary, or a Biſhop, or Abbat be diſſeiſed, and afterwards he releaſeth to the diſſeiſor; it ſeemeth the ſame is an alienation upon which he may have a writ *de ſine aſſenſu Capituli*; for if the diſſeiſor die ſeiſed after the releaſe made, the ſucceſſor hath not any remedy but by this writ, or by a writ of Right; But if the diſſeiſor doth not die ſeiſed, then it ſeemeth the ſucceſſor may enter upon the diſſeiſor, notwithſtanding the releaſe of his Predeceſſor, for by the releaſe no more paſſeth than he may rightfully releaſe, &c.

Writ

Writ of Assise of Mortdaunceſtor.

C THE Writ of *Mortdaunceſtor* lieth, where my Father or Mother, Brother or Siſter, or Uncle or Aunt, or Nephew or Neece dieth ſeiſed of any Lands, Tenements or Rents, or of a Corody or other Rents; as Hens or Capons iſſuing out of other Lands of an Eſtate of Fee-ſimple: Now if a ſtranger after their deaths abate in that land, rent or profit, I who am his heir ſhall have this Writ of Aſſiſe of *Mortdaunceſtor*.

D And if the Anceſtor were ſeiſed, the day that he died, of any lands or rents, or other like things of an eſtate in Fee-ſimple, although that a ſtranger entreth and diſſeiſeth him of that land or tenements the day that he dieth, ſo that he dieth not ſeiſed of the ſaid land or rents, &c. Yet I who am his heir ſhall have that Aſſiſe of *Mortdaunceſtor*, becauſe the Writ doth not ſuppoſe that any Anceſtor died ſeiſed, but the Writ ſaith, *Parati ſacramento recogn. ſi W. pater*, &c. *fuit ſeiſitus in dominico ſuo ut de feodo, die quo obiit*, &c. and the ſame is ſufficient, although he dieth not E ſeiſed; and the form of the Writ is ſuch:

Rex Vic. S. ſalutem. Si A. *fecer.* &c. *tunc ſum.* &c. xii *liberos & legales homines de viſn. de* N. *quod ſint coram Juſticiar. noſtris ad primam aſſiſam cum in partes illas venerint. vel coram Juſticiariis noſtris apud* Weſtmon. *oſtend.* &c. *vel coram dilectis & fidelibus noſtris* D. *&* E. *& his quos ſibi aſſociaverimus ad cert. diem & locum, quos eidem* D. *&* F. *tibi ſcire fac. parat. ſacramento recognoſcere, ſi* W. *pater prad.* A. *vel mater, ſoror, frater, avunculus vel amica fuit ſeiſitus in dominico ſuo ut de feod. de uno meſuagio & una virgata terra cum pertin. in* N. *die quo obiit. Et ſi obiit poſt coronation. dom.* H. *Regis. Et ſi idem* A. *propinquior hæres ejus ſit, & interim prad. meſuag. & terr. videant, & nomina eorum imbreviari fac. & ſum. per bonos ſum.* B. *qui prad. meſ. & terras nunc tenet, quod ſit ibi ad audiend. illam recogn. & habeas ibi ſum. & hoc bre. Teſte*, &c.

10 E. 2. Fermeto. 55. Plow. Com. 319. if a man hath iſſue a ſon, and his wife dieth; and he taketh another wife, and hath iſſue a ſon, and lands are given to him, and his ſecond wife in ſpecial tail before the *ſtatute* of *Donis*, if a ſtranger had abated, no *Mortdaunceſtor* lieth.

F And upon that Writ he needs not have any ſpecial Patent, for the general Patent made to the Juſtices, ſhall ſerve for that Writ. And if the Writ be, *Quod ſit coram dilectis & fidel. noſtris* D. *&* E. *& his quos ſibi aſſociavimus*, then

they uſe to have a ſpecial Patent directed to the ſame Juſtices, *&c.* But if the Juſtices be the Juſtices of Aſſiſe in the ſame County, then their general Patent ſhall ſerve for that Aſſiſe as well as if they had a ſpecial Patent. And the ſpecial Patent is ſuch:

Rex dilect. & fidelibus ſuis D. *&* E. *ſalut. Sciatis quod conſtituimus vos Juſtic. noſtros una cum his quos vobis aſſociaver. ad aſſ. mortis anteceſſoris capiend. quam* A. *arrain. coram vobis per breve noſtrum de uno meſ. & una virgata terr. in* N. *& ides,* &c. as in the Patent of Aſſiſe of *Novel diſſeiſin.*

30 Aſſ. 24. Br. Attainr. 72. 50 Aſſ. 4. Br. Atta. 84.

And a man may have an Aſſiſe of Mortdaunceſtor of ſeveral Rents, againſt ſeveral perſons in ſeveral Counties, and in the end of the Writ ſhall be ſeveral ſummons againſt the Tenants; and the form of the Writ is ſuch: G

Rex Vic', &c. *Si* A. *&* B. *fecer.* &c. *tunc ſum.* xij. *liberos,* &c. *parati ſacramento recognoſcere ſi* W. *pat. prad.* A. *& avus prad.* B. *fuit ſeiſitus,* &c. *de decem ſolid. redditus cum pertinen. in* N. *& ſi obiit,* &c. *Et iidem* A. *&* B. *ſint, propinquior,* &c. *& interim tenementum illud, unde redditus ille provenit, videant, & nomina eorum,* &c. *& ſum. per bon. ſum.* S. *qui ſex ſolid. redditus eis inde deforc. &* T. *qui quat. ſolid. redditus eis inde deforc. quod tunc ſint,* &c.

And by this Writ it appeareth, That the Aunt and the Neece ſhall join in Aſſiſe of Mortdaunceſtor, and that is by the Statute of *Glouceſt. cap. 6.*

And if the Heir who bringeth Aſſiſe be within age, he ſhall not find Pledges; and therefore the form of the Writ ſhall be of another form, and ſhall not ſay, *Si* A. *fec. te,* &c. but thus: H

Rex Vic', &c. *Sum.* &c. xij. *liber. & legal. homines,* &c. *ſi* W. *pat. prad.* A. *qui infra ætatem eſt, ut dic. fuit ſeiſit.* &c. And ſhall not ſay in the Writ, *Et ſi obiit poſt coronat.* &c. becauſe it appeareth by the age of the Demandant; but if many ſiſters be Demandants, and ſome of them be within age, and ſome of full age, then the Writ ſhall be in the common form, as if all were of full age.

If a man go beyond the Sea in Pilgrimage, and dieth there, his Heir ſhall have a Writ of Mortdaunceſtor of another form; thus: [196]

Rex Vic', &c. *Si* A. *fecer.* &c. *ſum.* xij. *&c. ſi* W. *pat. prad.* A. *fuit ſeiſit. in dominico ſuo,* &c. *de reddit. unius clavi garifili, cum pertin. in* N. *die in quo it. peregrinat. arripuit verſus terr. ſanct. vel verſus* Hieroſolym. *vel verſus* S. Jacob. *in quo itinere obiit, ut dic. & ſi iter illud arripuit poſt coronationem,* &c.

And

And in that Writ it ſufficeth if he were ſeiſed the day he went out of the Land, and took the Sea, although it was
A not the day of his death. And if the Father enter into Religion, and be profeſſed, the Son ſhall have a Mortdaunceſtor, if the Stranger abate in the Land; the Writ ſhall be, *Si* W. *pater*, &c. *die quo habitum Religionis aſſumpſit, in quo habitu profeſſus fuit, ut dicitur, Et ſi habitum illud aſſumſit poſt coronationem*, &c.

B If a man have a Corody to him and his Heirs, if he die ſeiſed, or was ſeiſed thereof the day of his death, his Heir ſhall have an Aſſiſe of Mortdaunceſtor thereof; if it be taken from him; and the Writ ſhall be:

. *Rex Vic'*, &c. *Si* W. *fecer.* &c. *tunc ſum.* &c. xij. *liberos*, &c. *de viſn. villæ* Weſtm. *quod ſint*, &c. *parati*, &c. *Si* L. *mat. prad.* W. *fuit ſeiſita in domin. ſuo ut de feodo de* xl. s. *reddit. & redditu* lxij *panum, trium lagenarum vini*, xx. *lagenar. cerviſiæ, &* xxx. *ferculorum cum pertin. in villa* Weſtm. *die quo obiit. Et ſi obiit*, &c. *Et ſi idem* W. &c. *& interim ten. unde redditus ille provenit videant, & ſum.* &c. T. *Abbat.* Weſtmon. *& fratrem* R. *de* B. *& fratrem* K. *de* S. *commonachos ejuſdem Abbatis, qui reddit. prad. ei deforc. quod tunc*, &c.

C And the order to ſet the parcels in the Writ, ſhall be as in a Writ of Right.

D And a man ſhall have a Certificate upon this Writ, and alſo Writs of Aſſociation, and *Si non omnes*, as he ſhall have in Aſſiſe of Novel diſſeiſin.

E And by the Statute of *Glouceſt.* if Tenant by the curteſie alien his Wife's Inheritance, and dieth, the Heir of the Wife ſhall have an Aſſiſe of Mortdaunceſtor, if he have not Aſſets by deſcent by the Tenant by the Curteſie, and the ſame ſhall be as well where the Wife was not ſeiſed of the Land the day of her death, as where ſhe was ſeiſed thereof, for that Writ is given by the Statute.

F If the Lord have the Ward of the Heir of his Tenant, and when he cometh of full age, the Guardian will not ſuffer him to enter into the Land, the Heir ſhall have an Aſſiſe of Mortdaunceſtor againſt the Guardian, by the Statute of *Marlebridge*, cap. 16.

G And the Proceſs in Mortdaunceſtor is Summons againſt the party, and if he make default at the day of the Aſſiſe return, then the Plaintiff ought to ſue a Reſummons, and if he make default again, the Aſſiſe ſhall be taken by his default. 3 Aſſ. 13. Br. default and appurtenance, 88.

And if a man vouch in an Aſſiſe of Mortdaunceſtor, and at the firſt day the Vouchee make default, then a Reſum-

mons ſhall iſſue forth againſt him; And ſo if the Tenant or Vouchee at the firſt day be eſſoined; and afterwards at the day given by the Eſſoin, the Tenant or Vouchee make default, a Reſummons ſhall be avoided. But if the Tenant at firſt day be eſſoined, as in the King's ſervice, and afterwards make default at another day, the Aſſiſe ſhall be taken by his default, *&c.*

And if the Writ of Mortdaunceſter be brought by ſeveral Summons againſt ſeveral Tenants, then the Aſſiſe may be taken one againſt one Tenant, and another againſt the other Tenant, *quod vi.* 3 *E.* 3. *Itin. North.*

And a Mortdaunceſtor doth not lie for Lands deviſable by will, becauſe title may fall to another who is not heir by the will of the Anceſtor, *&c.* and yet the Writ is true, that he was ſeiſed the day he died, *quod vi.* 23 *E.* 3. *lib. Aſſ.*

And if a man be ſeiſed in Tail, the remainder to his right heirs, and afterwards he died ſeiſed without iſſue of his body, and a ſtranger abateth, it is a queſtion if the heir ſhall have an Aſſiſe of Mortdaunceſtor. And *An.* 21 *E.* 3. *Itin. Suff. M.* 5 *H.* 4. the opinion of ſome is, That if the remainder be to his right heirs, that then he ſhall not have an Aſſiſe of Mortdaunceſtor; But if a gift in tail be made unto one, the remainder to him and his right heirs, that then he ſhall have an Aſſiſe of Mortdaunceſtor, becauſe he hath the remainder in Fee to him and his heirs: But it ſeemeth he ſhall not have an Aſſiſe of Mortdaunceſtor in the one caſe, nor in the other; for the words of the Writ are, *Si* W. *pater*, &c. *fuit ſeiſitus die quo obiit in dominico ſuo ut de feodo*, and that he was not, for he was ſeiſed in demeſne *ut de feodo Lathato*, and not in demeſn as of fee, and therefore the Jury cannot find that he was ſeiſed in his demeſn as of fee, for of the demeſn he was ſeiſed in tail. *Quære* of that.

If the Anceſtor dieth ſeiſed and hath two ſiſters his heirs, one of them ſhall not have an Aſſiſe of Mortdaunceſtor againſt the other, for this Writ lieth againſt ſtrangers, and not againſt parties in bloud.

And ſo in Gavelkind, one brother ſhall not have a Mortdaunceſtor againſt the other for the privity of bloud, but he ought for to ſue a *Nuper obiit* againſt his brother, or one ſiſter againſt the other, *&c.*

And *H.* 13 *H.* 3. *Itin. Suff.* the youngeſt brother had a Mortdaunceſtor againſt a ſtranger, and ſhall recover where the eldeſt went beyond ſea, although he were not dead, becauſe 18 years paſſed ſince the eldeſt went beyond the Sea.

And

And *A.* 13 *E.* 2. It was adjudged accordingly, where the younger brother recovered in Aſſiſe of Mortdaunceſtor, where the eldeſt went beyond the Sea, and was alive.

Writ of Nuper obiit.

A THE Writ of *Nuper obiit* lieth where the Grandfather, father, brother uncle, or other Anceſtors of the demandant dieth ſeiſed of Lands, Tenem. or Rents of an Eſtate in Fee-ſimple, and after their death, one of the heirs of the ſame Anceſtor doth enter and deforceth the demandants; now he or thoſe who are ſo diſſeiſed ſhall have that Writ againſt their Coparcenor; and that Writ lieth for one Coheir againſt the others, or for divers Coheirs againſt many as the caſe is, and it ought to be where the common Anceſtor dieth ſeiſed of Land, *&c.* of an eſtate in Fee-ſimple; for if one ſiſter do deforce another ſiſter of Land, whereof their Anceſtor died ſeiſed of an Eſtate in-tail, her ſiſter ſhall have a Formedon againſt the ſiſter who deforced her, *&c.* and not a *Nuper obiit.* And the form of the Writ is ſuch: [197] 7 E. 3. 15.

B *Rex Vic'*, &c. *Si* A. *&* B. *fecerint*, &c. *tunc ſum.* &c. C. *quod ſit coram Juſtic. noſtris apud* Weſtm. *tali die*, &c. *oſtenſ. quare deforc. præf.* A. *&* B. *rationabilem partem ſuam, quæ eam contingit de hæreditate, quæ fuit* W. *de* N. *patris, matris vel alterius anteceſſ. prædict.* A. B. *&* C. *cujus hæredes ipſæ ſunt, & quæ nuper obiit, ut dicit*, &c. *Et habeas ibi ſum. & hoc breve*, &c. *Teſte*, &c.

And the Writ may be brought by the Aunt againſt her Siſter and her Neece; and then the Writ ſhall be ſuch:

Rex Vic', &c. *Si* A. *&* B. *uxor ejus fecerint*, &c. *tunc ſum.* &c. C. *&* D. *quod ſint*, &c. *oſtenſ. quare deforc. præfat.* A. *&* B. *rationabilem partem ipſius* B. *quæ ei contingit de hæreditate quæ fuit* E. *in* N. *matris prædict.* B. *&* C. *& proavæ prædict.* D. *cujus hæred. ipſæ ſunt, & quæ nuper obiit, ut dic. & habeas*, &c.

C And that Writ lieth betwixt coheirs in Gavelkind, as well as between women who are Coparcenors; and if one Coparcenor be deforced by another Coparcenor and a ſtranger, ſhe ſhall have a *Nuper obiit* againſt her Coparcenor, and by the Rule in the Regiſter, that non-tenure ſhall not abate the Writ. *Br.* Entry congeable 122 collects, that the ſtranger gains nothing of the freehold by that entry, *quod nota.*

D And alſo by the Rule in the Regiſter, in a *Nuper obiit*; Nontenure of parcel of the thing demanded ſhall not abate the Writ. 7 H. 6. 8.

And if two of the coparceners enter after the death of E their anceſtor and deforce the third ſiſter, and afterwards they make partition betwixt them, and then one of the two alieneth her part unto a ſtranger in Fee, yet the third ſhall have a *Nuper obiit* againſt her two ſiſters notwithſtanding that alienation, and ſhall recover the third part thereof, whereof the coparcener who aliened not was ſeiſed, *&c.*

And for to recover the third part of the other Coparce- F nor, which is in the hand of the Stranger, ſhe ought to ſue an Aſſiſe of Mortdaunceſtor in her name, and in the name of her other Coparcenors, *&c.* Or a Writ of *Aiel*, as the caſe is.

18 H. 7. 1. per *Keble*, by the diſclaimer the demandant is put to his Aſſiſe of Mortdanceſtor alſo he is barred of his damages in the *Nuper obiit.*

And if one Coparcenor do enfeoff a Stranger in Fee, and G taketh back an Eſtate to him in Fee, or for Life, yet it ſeems a *Nuper obiit* lies againſt him by the other Coparcenor, if he do not diſclaim in the bloud, *M.* 2 *E.* 2. and it ſeems reaſonable. But *M.* 21 *E.* 3. and *M.* 45 *E.* 3. 7 *H.* 6. 8. It is holden the contrary: But ſeveral Tenancy, or non-Tenure, is no good Plea in a *Nuper obiit*, for the privity of bloud; but if he claim by purchaſe, or diſclaim in the bloud, it is a good Plea.

And a *Nuper obiit* lieth betwixt ſiſters of the half H bloud.

And if a *Nuper obiit* be brought of the ſeiſin of the Grandfather; darrein Seiſin in the Father is no plea, without alleging a dying ſeiſed in the Father, *&c.*

A *Nuper obiit* lieth of the Seiſin of the great Grand- I father.

And the *Nuper obiit* ought to be brought by that Coparcenor who is deforced, *&c.* againſt all the other Coparcenors, although that ſome of them have nothing in the Tenancy, *&c.*

And it appeareth, *T.* 4 *E.* 2. That the *Nuper obiit* lieth of L the Seiſin of his Father, if the Father were ſeiſed the day that he dyed; or the day before, for that amounteth to a dying ſeiſed, *&c.*

And if one Siſter hath Iſſue a Son, and dyeth, and the Son M doth enfeoff a Woman in Fee of all the Land and afterwards marries her: The *Nuper obiit* doth not lye by the other Coparcenor againſt the Husband and Wife; but there he may bring a Mortdanceſtor in his own name, and in the name of the Husband againſt the Husband and Wife. *An.* 18 *E.* 2. *Itiner. Canc.*

A Villain and his Wife ſhall not have a *Nuper obiit* againſt N his

his Wife's Coparcenor, becauſe he is not enfranchiſed by the marriage of one of the Coparcenors which was one of his Lords, to whom he was Villain before.

O And if the Father give Lands in Frankmarriage to his ſiſter, and dyeth ſeiſed in Fee of other Lands, ſhe ſhall not have a *Nuper obiit* againſt her ſiſter for the Lands in Fee-ſimple, unleſs he will put the Lands which were given in marriage in Hotch-pot, *&c.*

P A *Nuper obiit* lyeth of a Corody.

Q And Voucher, and the View do not lie in the *Nuper obiit.*

R And the Aunt and the Neece ſhall join in a *Nuper obiit* againſt the other Siſter or Neece, *&c.*

Writ of Quare ejecit infra terminum.

S THE Writ *Quare ejecit infra terminum*, lyeth where a man leaſeth Lands unto another for years, and after he entreth and maketh a Feoffment in Fee of the ſame Lands to a ſtranger, or for Life; the Leſſee ſhall have that Writ *Quare ejecit infra terminum*, againſt the Feoffee or Leſſee for Life.

11 H. 6. 6. If the term expire pendant the Writ, yet the Writ ſhall not abate.

T And in that Writ he ſhall recover his Term again, and his damages alſo if the Term be not ended, and if the Term be ended he ſhall recover all his damages.

U And the Proceſs in that Writ is Summons, Attachment and Diſtreſs *infinit*, and not Proceſs of Outlawry, becauſe the Writ is not *vi & armis*. And the form of the Writ appeareth after, *&c.*

A But this Writ of *Quare ejecit infra terminum*, was deviſed, as it is ſaid, by a wiſe man called *William Merton*, and for this cauſe. For if a man leaſe Lands for years, and after he ouſte his Leſſee, and after he hath put him out, he make a Feoffment of the Land unto a ſtranger in Fee. Now the Leſſee cannot have a Writ of *Ejectione firmæ* againſt him who is the Feoffee, becauſe he did not put him out, for which in that caſe the Leſſee had no other remedy but to enter again into the Land. And if the Feoffee do then put him out, the Leſſee may have againſt him an *Ejectione firmæ vi & armis* for the wrong done him, and before entry made by the Leſſee, he had not remedy againſt the Feoffee. And therefore by the equity of the Statute of *Weſt.* c. 24. (as often as hereafter it ſhall happen in the Chancery that in one caſe a Writ is found, and in the like caſe falling under the ſame Law, and wanting the ſame remedy, *&c.* Let the Clerks of Chancery agree, *&c.*) And by reaſon of that Statute was this Writ deviſed.

But yet if the Leſſor put out the Leſſee; and preſently make a Feoffment in Fee, ſo as the Feoffee be party or privy to the Ouſter of the Leſſee, then the Leſſee ſhall have a Writ of *Ejectione firmæ vi & armis* againſt the Feoffee, becauſe he is party to the Ouſter, and ſo the wrong done unto him. And the Writ followeth:

Rex Vic', &c. *Si* A. *fecerit*, &c. *tunc ſum.* &c. B. *quod ſit*, &c. *oſtenſur' quare deforc. præf.* A. *unum meſuagium cum pertin. in* N. *quod* C. *ei dimiſit ad terminum, qui nondum præteriit, infra quem terminum idem* C. *præfat.* B. *meſuag. illud vendidit, occaſione cujus venditionis idem* B. *præf.* A. *de meſuagio prad. ejecit, ut dicitur, & habeat*, &c.

And the like Writ lieth where the Son and Heir of the Leſſor maketh a Feoffment, *&c.* and the Feoffee ouſted the Leſſee.

And if the Leſſee granteth over his term, and afterwards the Leſſor maketh a Feoffment of the land unto a ſtranger in fee. Now the ſecond Leſſee ſhall have that writ, *&c.* and the writ ſhall be;

Quare deforc. præf. B. *unum meſuag.* &c. *quod* R. *cui* L. *illud dimiſit ad terminum qui nondum præteriit, eidem* B. *dimiſit ad eundem terminum, infra quem terminum idem* L. *meſuagium*, &c.

And ſo if a let a houſe to *A.* for years, who granteth over his eſtate to *B.* and afterwards two of the Leſſors die; and the Survivor maketh a Feoffment unto *C.* in fee, *B.* ſhall have a *Quare ejecit infra terminum* againſt the ſaid Feoffee, and the Writ ſhall recite the ſpecial matter.

And if a man do leaſe land for years, and the Leſſor doth ſuffer a Recovery to be againſt him upon a feigned title, who entreth, yet it ſeemeth the Leſſee ſhall have this writ of *Quare ejecit infra terminum*, &c. And the words of the writ are, *Occaſione cujus venditionis*; and yet the ſame is not properly a ſale, but thoſe words are but of form. But before the Statute of 21 *H.* 8. c. 15. it ſeemeth that the Tenant for years could not have falſified the Recovery had againſt his Leſſor.

35 H. 8. 52. 27. 136 H. 8. 62. L. H. 8. fol. 74. 5 H. 7. 7. 7. 37. 11 H. 6. 7. Baling. 201.

And if a man leaſe lands for a term of years, and afterwards dieth without heir, and the Lord by Eſcheat enter and puts out the Termor, it is a doubt whether he ſhall have a *Quare ejecit infra terminum* againſt the Lord by Eſcheat; but it ſeemeth reaſonable that he ſhould have it.

And ſo if the Villain leaſeth lands for years, and after the Lord of the Villain enter, and puts out the Termor, the Leſſee ſhall have that writ. And ſo if a man leaſe lands for years,

years, and afterwards a ſtranger put out the leſſee, and diſſeiſeth the leſſor, and afterwards the leſſor releaſeth unto him, it ſeemeth the leſſee ſhall have the writ, *Quare ejecit infra terminum* againſt the diſſeiſor, *&c.*

And *Quare ejecit infra terminum* lieth as well againſt the leſſor, as againſt his feoffee, *quod vide H.* 19 *H.* 6.

K And it ſeemeth that the ſale ſuppoſed in the writ, is not traverſable but onely the ejectment, *&c.* And if ſo, then it ſeemeth the writ lieth againſt the Lord by Eſcheat, or againſt the Lord of the Villain who putteth out the termor, *&c.*

But an *Ejectione firmæ* lieth againſt the Lord of the Villain, if he put the term out of his leaſe made by his Villain, before entry made by the Lord into the land. And ſo an *Ejectione firmæ* lieth againſt the Lord by Eſcheat, if he ouſt the Termor of the leaſe made by the Tenant, *&c.*

And for the Book of 19 *H.*6. it appeareth that it is in the election of the leſſee, to ſue a writ of *Ejectione firmæ*, or a writ of *Quare ejecit infra terminum* againſt the leſſor or his heir, or againſt the Lord by Eſcheat, or againſt the Lord of the Villain, if they put the Termor out of his term, *&c.*

Writ of Ex gravi Querela.

L THE writ of *Ex gravi Querela* lieth, where a man is ſeiſed of any Lands or Tenements in any City or Borough, or in Gavelkind; which lands are deviſable by will, time out of mind, *&c.* Now if one who had lands or tenements there, doth deviſe thoſe lands or tenements unto another in feeſimple, or in feetail, he to who the deviſe is made ſhall have this writ of *Ex gravi querela*, for to execute that deviſe.

Note, that if a Town hath paid 15. it is no ancient Town that may deviſe.

Per. 40. *Aſſ.* 41. 39 *Aſſ. Br. Aſſ* 355. This writ is not incident to lands deviſeable. *Quere*, If a Deviſe of a Rent out of the land deviſeable, be within the benefit of this Writ. 26 H. 8. *&c.* or 5 & 4 & 5 Ma. Dyer 140.

M And if a man do deviſe ſuch lands or tenements unto one in tail, the remainder over in fee unto a ſtranger, if the tenant in tail enter and be ſeiſed by force of the entail, and afterwards dieth without iſſue, he in the remainder ſhall have ſuch writ of *Ex gravi querela* to execute that deviſe.

And ſo if a man deviſe Lands or Tenements unto one in tail, and afterwards the Tenant in tail dieth without iſſue of

of his body; the heir of the donor, or he who hath the reverſion of the Land ſhall have the Writ *de Ex gravi Querela* in the nature of a Formedon in the Revertor, to recontinue the poſſeſſion of the Land to him who hath the Reverſion. And firſt for land deviſed in tail within the City of *London*; the form of the writ for the heirs of the Deviſee in tail, is ſuch:

Rex Majori & vic' Lond. ſalutem: Ex gravi querela l. filia E. & M. ſororis ejuſdem I. accepimus, quod cum ſecundum conſuetud. in eadem civitate hactenus obtenta & approbata liceat unicuique Civi ejuſdem civitatis tenem. ſua in eadem civitate in teſtamento ſuo in ultima voluntate ſua tanquam catalla ſua legar. cuicunque voluerit, ac S. quondam Civis civitat. prædict. in teſtamento ſuo in ultima voluntate ſua quatuor ſhopas cum pertin. in eadem civitate exiſtent. vel quatuor meſuagia, & decem ſhopas cum pertin. &c. E. habend. ſibi & hæred. de corpore ſuo exeuntibus legaſſet R. & S. uxori ejus, duo meſuag. & iij. ſhopas inde F. & iij. ſhopas inde præf. I. & M. filiabus & hæred. ejuſdem in E. defunct. minus juſte in ipſar. I. & M. diſpend. non modicum & gravamen, & contra voluntatem teſtatoris prædict. ac contr. conſ. prædict. Et quia eiſdem I. & M. injuriat. noluimus in hac parte: vobis mandamus, quod vocat. coram vobis partibus prad. auditiſque hinc inde earum rationibus, inſpectoque tenore teſtamenti prad. eiſdem I. & M. plenam & celerem juſtic. inde fieri faciat. prout de jure & ſecundum conſuet. prad. fuerit faciend. hactenus in caſu conſimili ibid. fieri conſuevit, vel eiſdem I. & M. in hac parte fieri faciat debitum & feſtinum juſtic. complementum, prout, &c. Teſte, &c.

40 Aſſ. 41. Br. Caſtrum 38.

Locum imperfectum, See the next Writ.

And it appeareth by that writ, That the King commandeth them to do according to the cuſtome of the City, or to do juſtice to the parties, by which it ſeemeth, that the Mayor upon that writ ſhall award proceſs to ſummon the party who is Tenant of the Land, to appear at a certain day, to anſwer to the Plaintiff in the nature of a Summons in a *Præcipe quod reddat:* and when he cometh the Plaintiff ought to ſhew the Teſtament, and to count upon the ſame, and to alledge ſeiſin of the Land in the Teſtator, and how that he deviſed the ſame to him. And that the Defendant then plead thereunto, or the Mayor and Sheriffs ought to proceed therein according to the uſage of the City. And that writ may be ſued againſt ſeveral Tenants; and then the Mayor ought to make ſeveral preceps unto every Tenant. And if the land be in another Burrough, then the Writ ſhall be ſuch:

Rex

Rex ballivis ſuis de magn. Yarmouth, *ſalut. Ex gravi querela*, &c. (ut ſupra) *quod ſecundum conſ. in Villa dict. hactenus, &c. liceat unicuique Burgenſ. ejuſdem Vill. tenementa ſua, quæ ſibi acquiſierit in eadem Villa, in teſtamento ſuo in ultima voluntate ſua*, &c. (ut ſupra.) *Ac* N. *Burgenſ. ejuſdem Vill. unum meſuagium cum pertin. quod ſibi acquiſierit in eadem Villa, in teſtamento ſuo in ultima voluntate ſua* W. *& hæredibus ſuis legaſſet*, R. *de* E. *meſ. prædict. poſt mortem præd.* N. *ingreſſ. illud præfato* W. *deforc. minus juſtè, in ipſius* W. *&c.* (ut ſupra) *& quia nolumus*, &c. (ut ſupra.)

F And if a man deviſeth his lands to his wife for life, the remainder over to another in fee, and the Tenant for life entreth, and is ſeiſed by force of the deviſe and dieth, and he in the remainder is deforced, he ſhall have ſuch writ:

Ex gravi querela, &c. (uſque ibi) *voluerit, ac* M. *quondam Civis ejuſdem civitatis* D. *uxori ſuæ in teſtamento ſuo in ultima voluntate ſua, quatuor ſhopas cum pertin. in* I. *quas ſibi acquiſierit in eadem civitate, ad vitam ipſius* D. *habend. legaſſet, ita quod poſt deceſſ. ejuſdem* D. *præf. ſhopæ cum pertinent præf.* E. *& hæred. ſuis remanerent*, N. *quæ ſhopas illas tenet ex dimiſſione præd.* D. *eas præf.* E. *poſt mortem ejuſdem* D. *deforc. minus juſte, in ipſius* E. *diſpendium*, &c.

G And if a man do deviſe lands by his Teſtament in Tail, the remainder over in Tail unto another, and the firſt Tenant in Tail entreth, and dieth without iſſue; and the ſecond Tenant in Tail entreth in his remainder and dieth without iſſue, the heir of the Donor ſhall have a writ of *Ex gravi Querela* in this form:

Ex gravi querela, &c. (ut ſupra) *ac* I. P. *quondam Civis civitat. præd. pat. præd.* S. *cujus hæres ipſa eſt, unum meſuag. cum pertin. in ſuburbiis* Lond. M. *fil. ipſius* I. *& hæred. de corpore ipſius*, M. *legitime procreandis habend. legaſſet, Ita quod ſi idem* M. *ſine hæred. de corpore ſuo legitime procreat. obiret, prædict. meſuag.* &c. R. *fil. præd.* I. *& hæred. de corpor. præd.* R. *legitim. procreat. remaneret* L. *capellan. cantar. ad Altar.* S. Joh. *in novo opere in Eccleſia* S. Pauli Lond. *pro anima Magiſtri* W. *quond. canon. ejuſd' Eccleſiæ ordin. prædict. meſuag. cum pertin. poſt mortem præd.* M. *& præf.* R. *præf.* S. *ad quem diem meſuag. cum pertin. reverti debet, eo quod uterq;* M. *& R. obiit ſine hæred. de corpore ſuo legit. procreat. ut dic. deforc. minus juſte in ipſius* S. *diſpendium*, &c.

H And it appeareth by the ſubſequent writ, That when a man doth make a deviſe of his lands in *London*, and alſo of his goods, and makes Executors, *&c.* then the firſt Executors ſhall prove the ſame before the Ordinary; and then after they

they ſhall bring the ſame before the Mayor into *London*, &c. and it ſhall be there enrolled, and then upon that enrolment the Mayor upon a writ of *Ex gravi querela* ſued for the lands ſhall do execution, and ſuch proceſs as upon a fine of lands, *&c.* and the writ is ſuch:

Rex Majori, &c. *Vic.* Lond. *ſalutem. Cum ut accepimus, ſecund. conſuetudinem in eadem civitate hactenus obtentam & approbatam, teſtamenta in quibus laica tenementa in prædict. civitate legata fuer. fact. prius probatione eorund. teſtamentor. coram Ordinar. pro bonis & catallis in eiſdem legatis, coram vobis in Huſtingo noſtro* Lond. *approbari & irrotulari debeant ad exec. tenementor. ſic legator. faciend. Ac jam ex relatu* R. *conſang.* I. *de* P. *nuper civis* Lond. *accepimus, quod licet præf.* I. *unam ſhopam & duo ſolar. cum pertin. in Parochia S.* Mich. Lond. *in eadem civitate, in teſtamento ſuo in ultim. voluntate ſua præfat.* R. *legaſſet, habend. & tenend. ſibi & hered. ſuis in perpetuum, idemq; teſtam. prout moris eſt, coram Ordin. probatum, exiſtit, tamen* E. *qua fuit uxor* I. *de* P. *& A. exec. teſtamenti ejuſdem* I. *teſtamentum illud penes ſe detinent, non permittentes illud in Huſtingo prad. irrotulari, ut prad. eſt, in exhar. ipſius* R. *periculum manifeſtum, ac contra conſuet. prad. Nos nolentes eid.* R. *injuriari in hac parte, vobis mandamus, quod vocatis coram vobis præf. execut. & auditis tam prad.* R. *quam prad. execut. in hac parte rationibus, ulterius in premiſſ. faciatis. quod de jure,* &c. *& ſecund. conſuetud. civitatis prad. fuerit faciend. & hactenus in caſu conſimili ibidem fieri conſuevit.*

And by that writ it appeareth, That if a man have lands deviſed unto him in *London* by Will, that he ſhall have a writ unto the Mayor, to compell the Executors to bring in the ſame to be proved before them in *London*, and enrolled in the Huſtings.

And if a man have lands deviſed unto him in *Oxford*, the cuſtome is, That the Teſtament ſhall be proved there before the Ordinary, and afterwards it ſhall be proved before the Mayor of *Oxford*, &c. And if the Mayor will not prove the Will, then he to whom the deviſe is made, and alſo the Executors, who took any advantage of Adminiſtration by that Will, ſhall have a writ out of the Chancery directed unto the Mayor and Bailiffs, commanding them to prove the Will, and thereupon they ſhall have an *Alias* and a *Pluries*, *vel cauſam nobis ſignifices*, &c. and afterwards an Attachment againſt them if need be, returnable in the King's Bench, or Common Pleas.

And by the ſame reaſon he ſhall have the like writ againſt the Mayor of *London* to prove ſuch Will, and to enroll the ſame,

ſame, and upon that *Cui*, *Alias* and a *Pluries* againſt the Mayor of *London*, and Attachment if need be.

And by the ſame reaſon it ſeemeth reaſonable, that a man ſhall have a Writ directed to the Ordinary to prove the Will of any man, &c. and the form of the writ is ſuch:

Rex Majori & Ballivis Vill. Oxon. *ſalut. Querelam* T. *&* M. *uxoris ejus accepimus continent. quod cum ſecund. conſuet. in vill. prædicta uſitatam & hactenus approbatam, teſtamenta burgenſium villæ prædict. ibidem decedentium, ſuper tenement. & poſſeſſionibus, ſi fint ibidem legata, primo coram ordinar. & ſecundar. coram vobis in cur. villæ prædict. probar. debeant & conſuever. temporibus retroactis, ac executores teſtamenti* N. *cum præf.* T. *&* M. *poſtquam teſtamentum prædict.* N. *coram Ordinariis villæ prædict. prout moris eſt, probatum fuit, frequent. illud coram vobis iterato proband. detuler. juxta conſuet. prædict. occaſione quorund. tenementor. in ſuburbio, ejuſdem vill. quæ præd.* N. *in ultima voluntate ſua eidem* M. *legaverit, ſicut in teſtamento prædict. plenius continet. Vos tamen probationem illam hactenus recipere recuſaſtis, & adhuc recuſatis minus juſte, per quod nec prædict. executores, nec præf.* T. *&* M. *ſuper tenem. prædict. aut aliis tenementis per quod* N. *legatis adminiſtrationem conſequi poſſint, in retardationem executionis teſtament. prædict. & contra voluntatem præd.* N. *nec non damnum ipſorum* T. *&* M. *& execut. non præd. modicum damnum & gravamen: Nos igitur executoribus &* T. *&* M. *injuriari nolentes in hac parte, vobis præcipimus, ſicut alias præceperimus, quod ſi ita eſt tunc præfat. execut. &* T. *&* M. *plenam & celer. juſtitiam in hac parte fieri fac. prout de jure & ſecundum conſuet. præd. in caſu conſimili fuerit faciend. ita quod querela ad nos inde non perveniat iterata, vel cauſam nobis ſignificetis, quare mandatis,* &c. *Teſte,* &c.

And it is reaſonable that it be ſo done in every other City where lands be deviſeable by Will, and are deviſed by will, That the Executors and the Deviſee ſhall have ſuch actions againſt the Ordinary, and alſo againſt the Bailiffs of the Town and Borrows to prove ſuch Wills.

And in place of a Formedon in the Deſcender in tenements deviſed, is ſuch writ:

Ac A. *quondam civis,* &c. M. *filia ſua quoddam meſuag.* &c. *habend. ſibi & hæred. de corpore ſuo exeunt. legaſſet,* T. *Meſuagium prædict. ingreſſ. illud poſt mortem præd.* M. *&* W. *filii & hæred. ejuſdem* M. *præf.* L. *patri & hæred. prædict.* W. *deforciavit minus juſte, in ipſius,* &c.

And it ſeemeth, that when the tail is once excepted before of the deviſe in the Tenant in tail, or in the Tenant for term

term of life, that then he in the Remainder, or heir of Tenant in tail, have a Formedon in the Deſcender by the courſe of the Common Law after the Statute of *Weſt.* 2. according to the common form upon a gift made in tail by Deed.

And there is another form of writ in the Regiſter in nature of a Formedon in the Deſcender. C

And if a man in *London* deviſe land unto a woman for A term of her life, and afterwards to her Executors to ſell, and to convert the money to her own uſe, by the cuſtome of *London* that Teſtament ought to be proved before the Ordinary, and afterwards before the Mayor, *&c.* and to be enrolled, *&c.* If the Teſtament be proved before the Ordinary, and afterwards one Executor doth detain the ſame, and B will not prove it before the Mayor, *&c.* the other Executor ſhall have a ſpecial Writ directed unto the Mayor and Sheriffs of *London*, commanding them to call the Executors before them, and to ſee the Teſtament, *&c.* and to do right according to the cuſtome of the City, and according to the Law, *&c.* which writ appeareth in the Regiſter.

2 & 3 Ma. Dyer 127.

And if a man doth deviſe lands to his wife for the term C of her life upon condition that if ſhe marry, that the lands ſhall remain unto his Son in tail: and for default of ſuch iſſue, the remainder to the right heirs of the Donor in fee. Now if the wife taketh a husband who occupieth the lands, and he in the remainder dieth without heir of his body; the right heir of the Donor ſhall have a ſpecial writ of *Ex gravi querela* directed unto the Mayor and Sheriffs of *London*, reciting that ſpecial Deviſe, and the matter as it is, commanding them to call the parties, and to hear them, and to do right, *&c.* And by that it appeareth, that he in the remainder ſhall have advantage of the condition if it be broken; but the ſame ſhall be by way of action, and not by entry: for the condition not performed, which writ appeareth in the Regiſter.

Vide *Perkins* 164. That he in the Rem. ſhall not take benefit of the Condition by way of Entry.

Writ of Entre ad terminum qui præteriit.

A Writ of *Entre ad terminum qui præteriit* lieth where a D man leaſeth Lands or Tenements for term of life, or years, and afterwards the term expireth, and he to whom the leaſe was made, or a ſtranger entreth upon the lands, and occupieth the ſame, and deforceth the Leſſor, the Leſſor his heirs ſhall have the writ.

And that writ lieth in the *Per*, *Cui* and *Poſt*. For if the E Leſſee hold over his term, and afterwards maketh a Feoffment,

ment, the Leſſor or his heirs may have that writ againſt the Feoffee in the *Per*; and if the Feoffer maketh a Feoffment over, he may have it againſt the ſecond Feoffee in the *Per* and *Cui*, and againſt the third Feoffee in the *Poſt*. And the form of the writ is ſuch:

21 E. 3. Brief 308. One brought the Writ upon a Leaſe by his treſcule.

Rex Vic. &c. *Præc.* A. *quod reddat* B. *unum gurgitem*, &c. *in quem id* A. *non habet ingreſſum, niſi per* C. *cui prad.* B. *illud dimiſit ad. terminum qui præteriit*, &c. *Et niſi fecerit.* &c. *Et prad.* B. *fecerit te ſecurum*, &c.

And in the Poſt the Writ is: *Et in quod idem* A. *non habet ingreſſum, niſi poſt dimiſſionem, quam idem* B. *inde fecit* D. *ad terminum qui præteriit, & quod poſt terminum illud ad præf.* B. *reverti debet ut dic. & unde querit. quod prad.* A. *ei deforc.* &c. *& niſi*, &c.

And by thoſe words *Unde queritur*, in any writ of Entry in the *Per* and *Cui*, but only in a writ of entry in the *Poſt*.

But if a man will bring a writ of Entry, *Ad terminum qui præteriit* of his father, mother, or other anceſtor, then there behoveth to be in the writ the words, *quod clamat eſſe jus & hæreditatem ſuam*; and the form of the writ is ſuch:

Rex Vic. &c. *Præc.* A. *quod*, &c. *redd.* B. *unum meſuag. cum pertin. in* N. *quod clamat eſſe jus & hared. ſuam, & in quod idem* A. *non habet ingreſſum niſi per* Dpatrem, *vel matrem, vel alium anteceſſ. prad.* B. *cujus hæres ipſe eſt* q. *illud ei dimiſit ad termin. qui præteriit ut dicit, & niſi fecerit*, &c.

And in the *Per* and *Cui*, thus: *quod clamat*, &c. *& in quod*, &c. *niſi* p. C. *cui* D. *pat. vel alius anteceſſor prad.* B. *cujus hæres ipſe eſt, illud dimiſit ad termin. qui præteriit*, &c. And in the Poſt thus, *Niſi poſt dimiſſion. quam* R. *ac prædict.* B. *&c. cujus hæred. ipſi ſunt*, &c. or thus, *Quam* C. *pater præd.* B. *& avus prædict.* S. *cujus hæred. ipſi ſunt inde fecit* H. *ad termin. illum qui præteriit, & quod poſt termin. illum ad præfat.* &c. *reverti debet, ut dic. & und. quer. quod prædict.* A. *eis deforc.* &c. *niſi*, &c.

And in every writ of Entry which a man demandeth of the poſſeſſion of his anceſtor, he ought to have theſe words in the writ, *Quod clamat eſſe jus & hæred.* &c. but of his own poſſeſſion he ſhall not have thoſe words in the writ, but only in a *Cui in vita*, brought by a woman of her inheritance alieped by her husband, for there ſhe ſhall have in her writ theſe words, *quod clamat eſſe jus & hæreditatem ſuam*, &c. but the ſame is where the woman claimeth an eſtate in Feeſimple by the writ, for if ſhe claim but an eſtate in tail, or a freehold by her *Cui in vita*, then the writ of *Cui in vita* ſhall make a ſpecial mention of that eſtate, *&c.*

If

If a man leaſe a Manor for life or years, unto which an advowſon is appendant, and afterwards the Leſſee doth make a Feoffment of the Manor in fee, and taketh back an eſtate of the Manor, except the advowſon, to him for life, If the Leſſor bring a writ of Entry, *ad terminum qui præteriit*, of the Manor againſt the leſſee, and doth not make exception of the advowſon; the writ ſhall abate for nontenure of the advowſon upon the matter ſhewed, as appeareth by the Regiſter. G

The Aunt and the Neece ſhall joyn in this writ of *ad terminum qui præteriit*, as appeareth by a writ before mentioned. H

And if a man maketh a feoffment in Fee upon Condition that if he pay a certain ſum of money at a certain day to the Feoffee or his heirs, that then he ſhall have his land again, and that he may enter, if he pay the money at the day, and afterwards the Feoffee will not ſuffer him for to enter: The Feoffor ſhall have the writ of *ad terminum qui præteriit*, becauſe that when he payeth the money, the other hath no term in-effect; and if he ſhould not have this writ, he could not have any remedy but to enter, *&c.* and thereupon to have an Aſſiſe.

Vi. Theolrel. 231, 232. 228. 8 E. 3. *Entre* 4. *Vi.* 14 H. 8. 10. *Brook.*

And *M.* 5 *E.* 3. it was adjudged that the plaintiff ſhould recover in ſuch action upon ſuch matter pleaded and ſhewed; But I do not perceive how the ſame could be maintained by reaſon, becauſe the feeſimple is not properly ſaid a term, for then the Lord by Eſcheat ſhould have a writ of *ad terminum qui præteriit*, if his Tenant dieth without heir, where he cannot have a writ of Eſcheat; and in *terminum qui præteriit*, the leaſe alledged in the Court is traverſeable.

If the husband and wife leaſe the wives lands for years, and the husband dieth, and the Termor holdeth over his term, the wife ſhall have a writ of *ad terminum qui præteriit* if ſhe will, *&c.* but ſhe ought for to count that ſhe and her husband leaſed the Land, *&c.*

Vid. 50 E. 3. 17.

And it appeareth in 8 *E.* 2. *Itin. Canc.* that the Grantee in reverſion ſhall have a writ of *ad terminum qui præteriit* againſt the leſſee, or his heir, or aſſignee, and yet there is no ſuch writ in the Regiſter.

Writ

Writ of Dum fuit non Compos Mentis.

C THE Writ of *Dum fuit non Compos Mentis*, lieth where a man, who is not of *ſane memoire*, alieneth his lands or Tenements in Fee-ſimple or in Fee-tail, for life or for years, if he be afterwards divorced by his Alienee or Leſſee, then he himſelf ſhall have this Writ againſt his Alienee or Leſſee, notwithſtanding his own alienation, or his own leaſe; and the ſame appeareth by Writs in the Regiſter, which are of ſuch form:

Rex Vic', &c. *Præc.* A. *quod reddat* B. *unum meſ. & xx. act. terr. cum pertin. quæ id.* B. *ei dimiſit, dum non fuit Compos Mentis ſuæ, ut dicit, & niſi fecerit*, &c. Vel ſic, *In quod idem* A. *non habet ingreſſum niſi per* C. *cui præd.* B. *illi dimiſit, dum non fuit compos mentis*, &c. Vel ſic, *in the* Poſt, *In quod idem* A. *non habet ingreſſ. niſi poſt dimiſſion. quæ præd.* B. *dum non fuit compos mentis ſuæ inde fecit* D. *& unde queritur*, &c.

D And ſome have ſaid, that Writ lieth not by him who alieneth the land, becauſe he ſhall not diſable himſelf nor contradict his own deed; but that ſeemeth to be little reaſon, for this is an infirmity which cometh by the act of God, and it ſtandeth with reaſon, that a man ſhould ſhew how he was viſited by the act of God with infirmity, by which he loſt his memory and diſcretion for a time; as if an Infant within the age of twenty one years doth make a Feoffment in Fee, or a leaſe for years, he himſelf ſhall avoid his Feoffment or Leaſe, as well within age, as of full age, although he ſhall not have a *Dum fuit infra ætatem* within age, becauſe the writ doth ſuppoſe him to be of full age, but an Infant of the age of 14 years hath diſcretion adjudged within at ſuch age, and if he at ſuch age commit felony, he ſhall be hanged for the ſame, and yet his Feoffment, Leaſe or Grant, ſhall not bind him before the age of 21 years; becauſe he hath not perfect diſcretion or knowledge what he ought to doe, or what is to his profit or diſadvantage before ſuch age; and therefore he ſhall alledge that he was within age at the time of the Feoffment, Grant or Leaſe made by him; by which it appeareth, that he ſhall alledge, that he had not perfect diſcretion at that time, for that nonage is an infirmity of nature, and cometh by the act of God; and *à fortiori*, then he who is of *non ſane memoire* ſhall alledge that he was not of *Sane memoire* at the time of his Feoffment or Grant, for he who is of unſound memory, hath not any manner of diſcretion; for if he kill a man it ſhall not be felony, nor murther,

Plow. Com. 19. a.

murther, nor he ſhall not forfeit his lands or goods for the
5 E. 3. Con. 24. contra. ſame, becauſe it appeareth that he hath not diſcretion, for if he had diſcretion he ſhould be hanged for the ſame, as an Infant who is of the age of diſcretion, who committeth murther or felony ſhall be hanged for the ſame.

And it appeareth in *Britton*, that in debt upon a bond, the defendant ſaid, that he was not of *Sane memoria* at the time of making the Bond, and holden it was a good Plea.

Stanford. Prerog. 34. And if an Idiot doth releaſe all his right by deed; yet if it be afterwards found by office that he is an Idiot, the King ſhall ſeiſe the Land, and the Releaſe ſhall not bind, *&c. Quod vide* in title *Scire facias*, *P.* 32 *E.* 3. in the Abridgments.

But in the book of Aſſiſes, *Anno* 35 *E.* 3. The Tenant in an Aſſiſe pleaded the Releaſe of the Plaintiff, and the Plaintiff ſaid, that he was not then of *Sane memoire*, &c. And there the opinion of two Juſtices was, that he ſhould not have that Plea; but I do not much regard their opinion, for the reaſons aforeſaid.

Dum non compos mentis was brought of the alienation by a Sot, and admitted 18 *E.* 3. *Sc. Jac.* 10. 12 *E.* 4. 8. 39 *H.* 6. 42. And it appeareth in 7 *Henry* 4. 5. That a Feoffment of an Idiot made by Letter of Attorney is void; and ſo it ſeemeth to be of a man of *Non ſane memoire*.

And if a man of *Non ſane memoire* alieneth his land in Fee and dieth, his heir ſhall have ſuch Writ as may enter, as his anceſtors might have entred, as well as if an Infant within age had aliened his Lands, *&c.*

And in 25 *E.* 3. in the Book of Aſſiſes, a man of *Non ſane memoria* made a Feoffment in fee, and took back an eſtate to himſelf for life, and there it was agreed and admitted that the ſame was a remitter, and thereupon iſſue was taken, that he was of perfect memory, *&c.* and that was found by Verdict; which ſee in the Title of Feoffments in the Abridgments.

And the Writ for the heir upon the alienation of his Anceſtors ſhall be in ſuch form:

Rex Vic', &c. Præcipe A. quod, &c. reddat B. 20 act. ter. cum pertin. in N. quas clam. eſſe jus & hæreditatem ſuam, & in quas idem A. non habet ingreſſum niſi per C. vel alterum anteceſſ. prædict. B. cujus hæres ipſe eſt, qui illas ei dimiſit, dum idem C. non fuit compos mentis ſuæ, ut dic', &c.

And thus in the *Per & Cui*:

Quas clamat, &c. & in quas, &c. niſi per C. cui D. quas prædict. B. vel alius anteceſſ. prædict. B. cujus hæres ipſe eſt, illas dimiſit, dum idem D. non fuit compos mentis ſuæ.

Or thus in the *Poſt*.

Quas clamat, &c. Et in quas, &c. niſi poſt dimiſſionem quam

quam C. *proavus, vel alius antecessor. praedict.* B. *cujus haeres ipse est, dum idem* C. *&c. inde fecit* H. *ut dicit, & unde queritur. &c.*

C And 14 *An.* of the King was such Writ granted:

D *Praecipe* R. *quod, &c. reddat* B. *unam redditum trium panum, septem lagenarum cervisiae, & septem ferculorum per septimanam cum pertin. in* C. *& quem idem* B. *ei dimisit, dum non fuit compos mentis suae, ut dic. & nisi, &c.* And the Process is *Grand Cape & Petit Cape*, as in other *Praecipe quod reddat.*

Writ of Intrusion.

E THE Writ of Intrusion lieth, where Tenant for life, or in dower, or by the courtesie, dieth seised of such estate for life, and after their death a stranger doth intrude upon the land, he in the reversion shall have that Writ against the intruder, and the Writ shall be such:

F *Rex Vic', &c. Praecipe A. quod juste, &c. reddat* B. *unam carucatam terr. cum pertin. in* N. *quam clamat esse jus & hereditatem suam, & in quam idem* A. *non habet ingressum nisi per intrusionem quam in illam fecit post mortem* C. *qui fuit uxor* D. *quae illam tenuit in dotem de dono praed.* D. *quondam viri sui patris vel fratris praed.* B. *cujus haeres ipse est, ut dicit, & nisi, &c.*

And in the *Per* thus:

Et in quod idem A. *non habet ingressum nisi per* C. *qui illud dimisit post mortem* D. *qua fuit uxor* E. *quae illud tenuit in dotem de dono praedict.* E. *quondam viri sui.*

And in the *Per* and *Cui* thus:

Et in quod idem A. *non habet ingressum nisi per* C. *cui* D. *illud dimisit, qua se in illud intrusit post mortem, &c.*

And in the *Post* the Writ is thus:

In quam idem A. *non habet ingress. nisi post intrus. quam* C. *in illud fecit post mortem* D. *quae fuit uxor* E. *qua illud tenuit in dotem de dono praedict.* E. *quondam viri sui fratris praedict.* B. *cujus haeres ipse est, & quod post mortem praedict.* D. *ad praesat.* B. *reverti debeat, ut dicit, & unde queritur, &c. & nisi, &c.*

And so that Word, *& unde queritur* was put in every Writ of Entry in the *Post.*

G And if a woman recover dower against him in the Reversion, or against his heir, and afterwards she dieth seised of that estate, and a stranger doth intrude into the land, Then he in the reversion shall have a Writ of Intrusion,

and in the Writ mention ſhall be made of the recovery, thus, *In quod idem* A. *non habet ingreſſum niſi per intruſionem quam in illud fecit poſt mortem* C. *quæ fuit uxor* D. *quod illud in Curia noſtra coram Juſticiariis noſtris apud* W. *per breve noſtrum per conſiderationem ejuſdem Curiæ recuperavit, ut dotem ſuam quam eam contingebat de libero tenemento, quod fuit prædict.* D. *quondam viri ſui in eadem villa verſus prædict.* B. Vel ſic, *verſus* W. *patrem vel alium anteceſſorem prædict.* B. *cujus hæres ipſe eſt, ut dicit, & niſi*, &c.

And ſo ſhe ſhall have another Writ of another form, where ſhe recovereth her Dower againſt the heir of her husband, and after the heir granteth the reverſion unto the ſaid *B.* and then the Tenant in Dower dieth ſeiſed, and a ſtranger abateth, the ſaid *B.* ſhall have a Writ of Intruſion againſt the ſtranger, and the Writ ſhall rehearſe the whole ſpecial matter, which Writ appeareth in the Regiſter.

And the Aunt and the Neece ſhall join in a Writ of Intruſion, and if the heir doth aſſign Dower unto his Mother, and then commits felony, for which the Lord claimeth the reverſion, and granteth the ſame to one in fee, to whom the Tenant attorneth, and afterwards the Grantee of the reverſion hath iſſue two daughters, and dieth, and one of them hath iſſue and dieth: Now the Aunt and the Neece ſhall join in that Writ, &c. and the Writ ſhall be ſuch:

Rex Vic', &c. *Præcipe* A. *quod juſte*, &c. *reddat* B. *& M. ſorori ejus, & P. & F. fratri ejus unum meſuag.* &c. *In quod idem* A. *non habet ingreſſ. niſi poſt intruſionem quam* H. *in illud fecer. poſt mortem* I. *quæ fuit uxor* W. *qua illud tenuit in dotem de*, &c. *quondam viri ſui de* N. *patre prædict.* B. *& M. & ava prædicto* P. *& F. cujus hæred. ipſi ſunt, ex aſſign.* T. *capitaldom. feodi illius, de quo prædicto* I. *illud tenuit in dotem ratione feloniæ per* W. *de* S. *filium & hæred. prad.* W. *facta, ut dicitur. Et quod poſt mortem prædicti* I. *ad præfat.* B. M. P. *& F. reverti debet per formam aſſign. prædict. ut dicunt, & unde querentur*, &c.

[204] And if a man intrude after the death of Tenant by the Courteſie, the Writ of Intruſion ſhall be ſuch:

Præcipe A. *quod*, &c. *reddat* B. &c. *quod clamat*, &c. *Et in quod idem* A. *non habet ingreſſum, niſi per intruſionem quam in illud fecit poſt mortem* D. *qui illud tenuit per legem* Angliæ *poſt mortem* C. *quondam uxoris ſuæ, matris vel amitæ prad.* B. *cujus hæres*, &c. *ut dicit.*

And in the *Per* thus:

Niſi per C. *quod illud ei dimiſit, quod ſe in illud intruſit*, &c. ut ſupra.

And

And in the *Per* and *Cui* thus:

Niſi per C. *cui* D. *illud dimiſit, quod ſe in illud intruſit,* &c.

And in the *Poſt* thus:

Niſi poſt intruſ. quam W. *in illud fecit poſt mortem* C. *quod illud tenuit per legem* Angl. *poſt mortem* D. *quondam uxoris ſuæ, matris prad.* B. *cujus hæres,* &c. *Et quod poſt mortem pradict.* C. *ad præfat.* B. *reverti debet, ut dicit, & unde queritur,* &c. *& niſi,* &c.

B And if a man doth intrude after the death of Tenant for life; then he in the reverſion ſhall have ſuch Writ of Intruſion.

Rex Vic', &c. *Præcipe* A. *quod juſte,* &c. *reddat* B. &c. *in quod idem* A. *non habet ingreſſum, niſi per intruſionem quam in illud fecit poſt mortem* C. *cui pradict.* B. *vel cui* D. *pater vel alius anteceſſ. pradict.* B. *cujus hæres ipſe eſt, illud dimiſit ad vitam ipſius* C. *ut dicit, & niſi* &c.

And in the *Per* thus:

In quod idem A. *&c. niſi per* C. *quod illud ei dimiſit qui ſe in illud intruſ. poſt mortem* W. *cui pradict.* B. *vel* R. *patr. vel alius anteceſſ. pradict.* B. *cujus hæres,* &c. *illud dimiſit ad vitam ipſius* W. *&c.*

And in the *Per* and *Cui* thus:

In quod, &c. *niſi per* C. *cui* D. *illud dimiſit, quod ſe in illud intruſit,* &c.

And in the *Poſt* thus:

Niſi poſt intruſ. quam D. *in illud fecit poſt mortem* I. *cui* B. *vel alius anteceſſ. pradict.* B. *cujus hæres,* &c. *illud dimiſit ad vitam ipſius* I. *Et quod poſt mortem ipſius* I. *ad præf.* B. *reverti debet, ut dicit, & unde queritur.*

C And in the Regiſter there are other forms of Writs, where the reverſion of Tenant is granted by fine, or otherwiſe, which ſhall be *ex aſſignatione.*

D And the heir in tail ſhall not have a Writ of Intruſion; if a man do intrude after the death of Tenant in Dower, or of Tenant by the Courteſie, or after the death of Tenant for life; he in the reverſion in tail ſhall not have a Writ of Intruſion, but he ſhall be put to his Writ of *Formedon*; for that Writ lieth for him who hath the reverſion in Feeſimple, or for term of life, and not for him who hath the Reverſion in tail or for term of years; for it lieth not but for him who hath a Freehold, after the death of Tenant for term of life, or of Tenant in Dower, *&c.*

And he in the remainder ſhall have a Writ of Intruſion, if a man do intrude after the death of Tenant for life; and ſo

the Aſſignee of the remainder ſhall have ſuch Writ.

If lands be given to two, and to the heirs of one of them, and he who hath the fee dieth, and then the Tenant for life dieth, the heir of him in remainder ſhall have ſuch Writ.

In quod, &c. *niſi per intruſionem quam in illud fecit poſt mortem* C. *quæ fuit uxor* D. *quæ illud tenuit ad vitam ſuam ex dimiſſ. quam* R. *inde fecit eidem* C. *& præfat.* D. *quondam viro ſuo, & hared. ipſius* D. *patris prædict.* B. *cujus hæres*, &c. *ut dicit, & niſi*, &c. And the Proceſs in that Writ is, *Summons, Grand Cape* and *Petit Cape.*

Writ Cui ante Divortium.

THE Writ of *Cui ante Divortium* lieth, where the huſband alieneth the wife's Land which ſhe had in Fee-ſimple, or in Tail, or for life unto a ſtranger in Fee-ſimple, in Fee-tail, or for life, and afterwards the Husband and Wife are divorced, then the Wife ſhall have that Writ againſt the Alienee: and the form of the Writ ſhall be ſuch:

Rex Vic', &c. *Præcipe* A. *quod juſte*, &c. *redd.* B. *quæ fuit uxor* D. *unum meſuagium cum pertin. in* N. *quod clamat eſſe jus & hereditatem ſuam & in quod*, &c. *niſi per prædict.* D. *quondam virum ipſius* B. *quod illud ei dimiſit, cui ipſa ante divertium inter eos celebr. contradicere non potuit.*

And that Writ lieth in the *Per, Cui*, and *Poſt*, as doth the other Writ of *Cui in vita.*

And if the husband do alien unto an Abbat in Fee, and afterwards the husband dieth, the wife ſhall have a Writ of *Cui ante divortium*, in the *Poſt*, againſt the Succeſſor of the Abbat, and the form of the Writ ſhall be thus:

In quod idem Abbas non habet ingreſſum niſi poſt dimiſſ. quam prædict. D. *quondam vir ipſius* B. *cui ipſa ante divort. contradic. non potuit inde fecit* L. *quondam Abbat. de* B. *ut dic. & unde queritur*, &c.

And the heir ſhall have a *Sur cui ante divortium*, where the wife dieth before the action brought, as well as he ſhall have a *Sur cui in vita*: but of an eſtate Tail, the heir ſhall not have a *Sur cui in vita ante divortium*, but ſhall be put to his *Formedon* in the Deſcender.

And the Aunt and the Neece ſhall join in that Writ, as they ſhall do in a *Sur cui in vita*; and the Proceſs is, *Summons, Grand Cape* and *Petit Cape.*

Writ

Writ of Cauſa matrimonii prælocuti.

A THE Writ of *Cauſa Matrimonii prælocuti* lieth, where a woman giveth lands unto a man in fee-ſimple, unto the intent that he ſhall marry her, and afterwards he will not marry within convenient time when he is required by the woman. Then the woman ſhall have that Writ, and the form of the Writ is ſuch: [205]

B *Rex Vic', &c. Præcipe* A. *quod juſte, &c. redd.* B. *unum meſuagium, quod eadem* B. *ei dimiſit cauſa matrim. inter eos prælocuti, quo eam duxiſſe debuit in uxorem, & nondum duxit, ut dic', &c.*

And in the *Per* and *Cui* thus:

In quod, &c. niſi per C. *cui prædict.* B. *illud dimiſit cauſa matrimonii, &c. & non duxit, ut dicit, Et unde queritur, &c.*

C And it ſeemeth that that Writ lieth for the woman, where ſhe giveth lands to a man for term of his life, for the intent to marry her, as well as where ſhe giveth it in fee-ſimple. But if ſhe giveth it to a man in tail for to marry her *&c.* although he will not marry her, it ſeemeth ſhe ſhall not have that Writ againſt him, by that means to avoid and defeat the eſtate tail; for that ſhall be contrary to the Statute of *Donis conditionalibus.* And a man upon a condition in law ſhall not make void the Statute. For the Statute makes a law certain by expreſs words of gift in tail. And then it is not reaſon that it ſhould be annulled by intendment, or by a thing averrable, which is not expreſſed, and ſhall be taken contrary to the Statute. And the heir ſhall have that Writ as well as the woman her ſelf, and the Writ ſhall be: C. 2. part 74. 3 & 4 Ma. Dy. 146.

D *Præcipe* A. *&c. quod redd.* B. *&c. quod clamat, &c. & in quod non habet ingreſſum niſi per* C. *matrem prædict.* B. *cujus hæres ipſa eſt, quæ illud ei dimiſit cauſa matrimon. &c. & nondum duxit, &c. & niſi, &c.* But if he expreſs an Entry if he marry, then he may alien, but till alienation he is ſeiſed *jure uxoris*, 5 E. 2. Br. Cond. 204.

E And it may be in the *Per, Cui* and *Poſt*, as the caſe is.

F And alſo the Aunt and the Neece may join in the Writ.

And if a man do give lands unto a woman unto the intent to marry him, although that the woman will not marry him, *&c.* he ſhall not have a Writ *Cauſa Matrimonii prælocuti* in that caſe, and alſo that the woman do after marry him; yet the woman ſhall hold the Land to her and her heirs, *&c.* and if the husband do afterwards alien them, ſhe ſhall have a *Cui in vita* for thoſe lands.

If a woman do enfeoff a ſtranger by deed of Land in Fee, to the intent to enfeoff her, and one who will be her husband, if the marriage doth not take effect, ſhe ſhall have the Writ of *Cauſa matrimonii prælocuti* againſt the ſtranger, notwithſtanding that the deed of Feoffment be abſolute; *quod vi.* in title *Aſſiſe*, 34 E. 3. *lib. Aſſiſe.* G

A woman did enfeoff a man upon condition that he ſhould take her to wife, and he had a wife at the time of the Feoffment, and afterward the woman for not performing of the condition, entred again into the land, upon the ſecond Feoffee, and her entry was adjudged lawfull, and the condition is good, *Anno* 40 E. 3. *lib. Aſſ.* H

14 H. 8. 10. *Brudnell.* 24 H. 8. 9. its a good condition. 40 *Aſſ.* 17. *Condit.* 17. *& Br. Condit.* 119.

And the husband and wife may ſue that Writ of *Cauſa Matrimonii prælocuti* againſt another who ought to have married her. I

And if a woman maketh a Feoffment in Fee by Deed, reſerving Rent, then ſhe ſhall not have that Writ of *Cauſa Matrimonii prælocuti* for the Rent reſerved, becauſe it is proved that the Reſervation was the cauſe of the Feoffment; but if ſhe hath a Deed to ſhew and prove that the Feoffment was to the intent that he ſhould marry her, then ſhe ſhall maintain her action notwithſtanding the reſervation made of the Rent. K

8 E 2. *Entrie* 78. *ac.* of a Condition expreſſed. Note 3 & 4 *Ma. Dy.* 146. one cannot aver a conſideration againſt a conſideration expreſſed by Deed. *Vid.* 14 *El. Dy.* 311, 312.

And a woman may ſue a *Cauſa Matrimonii prælocuti* without any writing ſhewed to prove the ſame, where ſhe maketh a Feoffment without Deed to a man in fee, to the intent to marry her, *&c.* and the Proceſs is *Summons*, *Grand Cape* and *Petit Cape*, &c. L

Writ of Entrie in Caſu proviſo.

THE Writ of *Entrie in Caſu proviſo* is given by the Stat. of *Glouceſt.* cap. 7. and that Writ lieth where Tenant in Dower doth alien in fee, for life or in tail, the land which ſhe holdeth in Dower; he who hath the Reverſion in fee, or in tail, or for life, ſhall maintain that Writ againſt the Alienee; and againſt him who is the Tenant of the freehold of the land during the life of the Tenant in Dower, *&c.* And the Writ may be made in the *Per*, *Cui* and *Poſt*, and the Writ ſhall be ſuch: M

Rex Vic', &c. *Præcipe* A. *&c. quod redd.* B. *&c. quod clamat*, &c. *& in quod* A. *&c. niſi per* C. *qua fuit ux.* D. *qui illud ei dimiſit, qua illud tenuit in dotem de dono præd.* D. *quondam viri ſui, patris vel alterius, anteceſſoris præditt.* B. *cujus hæres*, &c. *& quod poſt dimiſſ. per ipſum* C. *præfat.* A. *contra formam*

formam ſtatut. Glouc. *de communi conſilio regni noſtri inde proviſi, ſatt. in feod. ad præf.* B. *reverti debet per formam ejuſdem ſtatuti, ut dicit, & niſi,* &c.

And in the *Per* thus:

In quod idem A. *non habet ingreſſum niſi per* C. *cui* D. *qua fuit uxor* E. *illud dimiſit, qua illud tenuit in dotem, & quod poſt dimiſſ,* &c.

And in the *Poſt* thus:

Præcipe A. *quod,* &c. *redd.* B. *&c. quod clamat,* &c. *& in quod,* &c. *niſi poſt dimiſſionem quam* C. *qua fuit uxor* D. *qua illud tenuit in dotem de dono præditt.* D. *quondam viri ſui, patris præditt.* B. *cujus hæres ipſe eſt, inde fecit* F. *& quod poſt dimiſſion. per ipſam* G. *&c.* (uſque ibi) *revertere debet per formam ejuſdem ſtatuti, ut dicit, & unde queritur, & niſi,* &c. [206]

A And if a woman do recover her Dower againſt the heir, and afterwards doth alien in fee, the heir ſhall have the writ of *Caſu proviſo*; and in the writ he ſhall mention the recovery, as he ſhall do in a writ of *Entrie ad communem legem*, upon an alienation made by Tenant in Dower, *&c.* And although the woman alien in tail, or for life, yet the writ is always of one form.

B If a man grant the reverſion of lands which are holden of his inherit. in dower to another, and the Tenant attorneth, and afterwards the Tenant in Dower doth alien in fee, the Grantee of the Reverſion ſhall have ſuch writ *de aſſignatione.*

Præcipe A. *quod,* &c. *redd.* B. *&c. & in quod,* &c. *niſi per* C. *qua fuit uxor* D. *qua illud de præditt.* D. *tenuit in dotem de dono præditt.* D. *quondam viri ſui ex aſſignatione, quam* W. *filius & hæres præditt.* D. *inde fecit præfat.* B. *& quod poſt dimiſſion.* &c.

And if the Heir grant the reverſion in Fee, and the Tenant attorneth, and afterwards the Grantee granteth the ſame over, and the Tenant doth attorn; and afterwards the Tenant in Dower doth alien the Fee, the third Grantee of the reverſion ſhall have ſuch writ *De caſu proviſo.*

Rex Vic. &c. *Præcipe* A. *quod,* &c. *reddat* B. *&c. quod clamat,* &c. *& in quod,* &c. *niſi per, vel poſt dimiſſionem,* &c. (as the caſe is) *quam* C. *qua fuit uxor* D. *qua illud tenuit in dotem de dono præditt.* D. *quondam viri ſui de præfat.* B. *ex aſſignatione quam* E. *de quo præfat.* C. *illud tenuit in dotem ex aſſignatione* F. *de quo eadem* C. *illud tenuit in dotem ex aſſignatione quam* G. *filius & hæres præditt.* D. *inde fecit præf.*

præs. F. *inde fecit* W. *Et quod post dimiss. per ipsum* C. *præs.* A. &c.

If the writ be in the *Per*, and if the writ be in the *Post*, then the writ shall be:

Et quod post dimissionem per ipsum C. *revertí debet per formam*, &c.

And the Aunt and the Neece may joyn in that writ where the Tenant in Dower doth alien in Fee, and they have the reversion by descent for their Ancestor, and the Process is *Summons, Grand Cape, and Petit Cape*, &c.

Writ of Entre in consimili casu.

The Writ is not maintainable against Tenants in Tail, after possibility of issue extinct. Old Tenure. 13 E. 2. Entre congeable 56.

THere is another writ of the like nature, which is called a writ of *Entre in consimili casu*; and that writ lieth where Tenant by the Courtesie, or for life, or for another life doth alien in Fee, or in tail, or for life, now he in the reversion, who hath an estate therein for life, or in Fee-simple, or in tail, shall have that writ during the life of the Tenant for life, who aliened, and that writ is not given by the Statute of *Glocester*: which gave the writ of *in casu proviso*, but it is formed and granted upon the Statute of *Westminster*, 2. cap. 14. *Which saith, that as often as it shall happen in the Chancery, that in one case a writ is found and in the like case failing, wanting the same remedy but, the Clerks of the Chancery shall agree in the making the writ, and that appeareth*, H. 3. E. 2.

And if the Tenant by the Courtesie doth alien, he in the Reversion shall have such writ:

Præcipe A. *quod*, &c. *redd.* B. *unum messuagium*, &c. *quod clamat*, &c. *de* in *quod*, &c. *nisi per* C. *qui illud ei dimisit, qui illud tenuit per legem* Angliæ *post mortem* E. *quondam uxor. suæ, matris, proavæ, vel aviæ præd.* B. *cujus hæres ipse est, Et quod post dimissionem per ipsum* C. *præf.* A. *inde fac. in forâ ad proh.* B. *revertí debet per formam Statuti in consimili casu provisi, ut dicit, & nisi*, &c. *Et in quod*, &c. *nisi per* C. *qui* D. *illud dimisit qui illud tenuit per legem* Angl. *Et in quod*, &c. *nisi post dimissionem quam* C. *qui illud tenuit per legem* Angliæ, &c. *ut supra, cujus*, &c. *inde fecit* F. *& quod post dimissionem*, &c.

And if the Tenant for life alien, then he in the reversion shall have a writ in this form:

Rex Vic. &c. *Præcipe* A. *quod juste*, &c. *reddat* B. *unum messuagium*, &c. *in quod idem* A. *non habet ingressum nisi per* C. *cui præd.* B. *illud dimisit ad vitam ipsius* C. *& quod post*

dimiss.

dimissionem per ipsum C. præfat. A. inde fac. in feodo, ad præfat. B. jure debeat per formam Statuti, &c. ut supra.

And note, that by that writ it appeareth, that the writ doth suppose, that the Tenant for life doth alien in fee; and although he grant but for life, or in tail, yet the writ doth suppose that he alieneth in Fee, *&c.* But that is not material: for if it be in Fee, or in tail, or for life, it is a forfeiture of his estate. 38 H. 6. 9. 2.

And so in the case, in the writ *in Casu proviso*, and in the writ of *Entre ad communem Legem*, it supposeth the alienation to be made in Fee, although it be but for life, or in tail, for that there is no other form: and it may be made in the *Per*, *Qui* and *Post*, and that without title made in the Writ, because it is of a Lease made by the Defendant himself to the Tenant who alieneth: but if the Father or other Ancestor lease for life, and dieth, and afterwards the Tenant for life alieneth in Fee, *&c.* and now the Heir who is in the reversion, shall have a writ, which shall comprehend a title in it, and shall be such:

Rex Vic. &c. *Præcipe A. &c. quod*, &c. *redd.* B. *unum mesuagium*, &c. *quod clamat*, &c. *Et in quod*, &c. *nisi per C. & D. uxor ejus, quibus I. pater, vel mater, vel alius antecessor prad. B. cujus hæres ipse est, illud dimisit ad vitam ipsorum C. & D. & quod post dimissionem*, &c. [207]

And there the writ doth suppose, that the wife did demise it, *&c.* and yet she shall have a *Cui in vita* after the death of her husband, to recover the Freehold, notwithstanding the alienation made by her husband. And if Tenant for life grant his estate unto another, and the Grantee alieneth in Fee, *&c.* then the writ shall be:

In quod idem A. &c. nisi per C. cui D. qui illud tenuit ad vitam suam ex dimissione præd. B. illud dimisit ad eundem terminum, & quod post dimiss. &c.

A And if a man lease Lands for term of life, and afterwards dieth, and his heir grants the reversion to *B.* and the Tenant attorn, and afterwards the Lessee for life granteth his Estate over to one who alieneth to *A.* in Fee, now *B.* shall have such writ:

Præcipe A. quod, &c. *redd. B. &c. in quod*, &c. *nisi per C. qui illud ei dimisit, qui illud tenuit ad vitam D. de præf. B. ex assign. quem I. filius & hæres B. qui quidem R. illum præf. D. dimisit ad eundem terminum, inde fecit præf. B. & quod post dimis.* &c.

M. H. lease Lands unto *B.* for life, and afterwards granteth the reversion to B. in fee, and *R.* attorn, and afterwards *R.* alieneth in Fee, *B.* shall have this writ.

Rex

Rex Vic. &c. *Pracipe* A. *quod*, &c. *redd.* B. *in quod*, &c. *nisi per* R. *qui illud ei dimisit; qui illud tenuit ad vitam suam de præf.* B. *ex assign. quam* I *qui illud præfat.* R. *dimisit ad eandem terminum, inde fecit præf.* A. *& quod post dimiss.* &c.

And if Lands be given unto two, and the Heirs of one of them, and he who hath the Fee dieth, and afterwards the Tenant in life alieneth in Fee, the Heir of him in the remainder shall have this writ:

In quo, &c. *nisi per* C. *qui illud ei dimisit qui illud tenuit ad vitam suam ex dimissione, quam* H. *inde fecerit eidem* C. *& D. & hæred. ipsius* D. *patris prædict.* B. *cujus hæres ipse est, & quod post dimissionem*, &c.

And by that appeareth, That he in the remainder shall have a writ of *in consimili Casu*, if Tenant for life alien in Fee.

Vide 3 E. 2. Entre 6. contra. For it is not given by the Statute of Glocester But *West.* 2. cap. 24. fee 206. fol.

And if an Abbot or Prior leafe Lands for life, and alieneth, and the Prior dieth, the Succeffors shall have this writ.

Pracipe A. *quod*, &c. *redd.* B. *unum mefuagium*, &c. *quod clam. esse jus Eccles. suæ S.* Thomæ *Martyris de* K. *& in quod*, &c. *nisi per* C. *cui* D. *illud dimisit, qui illud tenuit ad vitam suam ex dimissione quam* S. *quondam Prior de* K. *præced. præd. Prioris inde fecit præf.* D. *& quod post. dimis.* &c.

And if Tenant in tail make Leafe for life, and the Tenant for life alieneth in Fee, the Tenant in tail shall have a writ *in consimili Casu*. And so it seemeth, if Tenant in tail do leafe the land unto another for the life of the Leffee, and dieth, and the Tenant for life alieneth in Fee; the Heir in tail may chooſe to have a Formedon, or to ſue the writ of *Consimili Casu*, living the Tenant for life. For the Tenant in the action shall not have the Plea to abate the writ, to say, that he hath title to have a Formedon of the Land, &c. But if Tenant in tail leafe Lands for the term of his own life, which is not any deſcent, and afterwards the Tenant for life doth alien in Fee, and the Tenant in tail dieth, his Heirs shall not have a writ of *Consimili casu*, but shall be put to his Formedon in that caſe. For there he hath not title to have any other action by colour of any demiſe: but in the caſe before, he had title by reaſon of the diſcontinuance made for life, to claim by reaſon of the right in reverſion deſcended to him, ſo that he had right by reaſon of the reverſion in his Father reſerved upon the leaſe, and alſo by reaſon of the title of the entail to chooſe what action he would have, *tamen Quære.*

E A Leaſe was made to one for term of life, the remainder unto another in Fee, and afterwards the Tenant for life did alien in Fee, for which he in the remainder brought a writ *de conſimili caſu*, and the writ was abated, *Paſ.* 7. *E.* 3. But the Court there ſaid, that the cauſe was, becauſe he in the remainder was not to have the remainder *in facto* until it fell, and that after the death of Tenant for life; and it is not like unto a reverſion: but the Law is not taken ſo at this day, but that he in the remainder hath the remainder veſted in him, as he in the reverſion hath the reverſion: for he ſhall have an action of waſte, and ſhall enter for the alienation of his Tenant, as well as he in the reverſion, and therefore it followeth, that the remainder is in him *in facto*, for which cauſe I conceive, that Judgment was not rightly F given. And *Hil.* 18 *E.* 3. it was holden by Juſtice *Herle*, that the writ did lie for him in the remainder, *&c.* And the heir in tail brought a writ of *Conſimili caſu* upon an alienation made by Tenant by the Courteſie, and the writ was maintainable. *T.* 31 *E.* 1.

Writ of Entrie ad communem Legem.

G THE writ of *Entrie ad communem Legem* lieth, where Tenant in Dower, or Tenant by the Courteſie, or for life, do alien in fee, or for the life of another, or in tail the Lands which they hold, *&c.* after their death, he in the reverſion, who hath it in Fee or for life, ſhall have that writ of *Entrie ad communem Legem*, and the writ ſhall be ſuch, &c.

H *Rex Vic.* &c. *Præcipimus* A. *quod juſte*, &c. *redd.* B. *&c. quod clamat eſſe jus & hæreditatem ſuam, & in quod idem* A. *non habet ingreſſum, niſi per* C. *qua fuit uxor* D. *qua illud ei* [208] *dimiſit, qua illud tenuit in dotem de dono prad.* D. *quondam viri ſui patris vel alter. anteceſſ. pradict.* B. *cujus*, &c. *ut dicit*, &c. *& niſi*, &c.

A And that is a writ for the Heir in the reverſion, who hath the ſame by deſcent, and may be in the *Per*, *Cui* and *Poſt*.

B And if a woman recover Dower, and afterwards alieneth in Fee, and dieth: then the writ of *Entrie ad communem Legem* ſhall mention the recovery, *&c.* and if Tenant by the courteſie alieneth in Fee, and dieth, the Heir ſhall have ſuch writ:

Præcipe

Præcipe quod, &c. *redd.* B. *&c. quod clamat*, &c. *in quod idem* A. *non habet ingreſſum niſi per* C. *qui illud tenuit per legem* Anglie *poſt mortem* D. *quondam uxoris ſue, matris præd.* B. *cujus hæres ipſe eſt, ut dicit*, &c.

And may be brought in the *Per*, *Cui* and *Poſt*, as the Caſe is.

And if Tenant by the Courteſie alien the Fee, and dieth, he in the reverſion who is Heir in Feeſimple, may ſue that writ, or an Aſſiſe of Mordaunceſtor given by the Statute of *Gloucester*, *cap.* 3.

And if Tenant for life alieneth in Fee, and dieth, he in the reverſion may have that writ in divers forms. One, If he have the reverſion by deſcent, the writ ſhall be:

Præcipe A. *quod*, &c. *redd.* &c. *quod clamat*, &c. *& in quod idem* A. *non habet ingreſſum niſi per* C. *cui prædict.* B. *vel* D. *pater, vel alius anteceſſ. prædict.* B. *cujus hæres*, &c. *illud dimiſit ad vitam ipſius* C. *ut dic.* &c.

And he may leave out theſe words in the writ, *Quod clamat eſſe jus & hæreditatem ſuam*, &c. When the Demandant made the grant to the Tenant for term of life who aliened, *&c.*

And that writ may be in the *Per*, *Cui* and *Poſt*, as the caſe is. And he may bring a writ of *Ad terminum qua præterit* if he will, if the Tenant for term of life doth alien, and dieth, as it ſhall pleaſe him.

And if Tenant for term of life do grant over his Eſtate unto another, and he in the reverſion granteth the reverſion in Fee, and the Tenant doth attorn; and afterwards the ſecond Grantee doth alien in Fee, the Grantee in the reverſion ſhall have ſuch writ.

In quod idem A. *non habet*, &c. *niſi per* C. *qui illud ei dimiſit, qui illud ad vitam ſuam tenuit de præf.* B. *ex aſſignatione quæ* I. *qui illud. præf.* C. *dimiſit ad eundem terminum, inde fecit præd.* B. *ut dicit.*

And it may be in the *Per*, *Cui* or *Poſt*, as the Caſe is, and in the writ which is in the *Poſt*, ſhall be this clauſe:

Et qua poſt mortem prædict. C. *ad præfatum* B. *reverti debet per formam aſſignationis præd. ut dicit, & unde queritur*, &c. *ut dicit*, &c.

Writ

Writ of Ceſſavit.

THE Writ of *Ceſſavit* lieth in divers ways. For one Writ is where there is Lord and Tenant, and the Tenant will not pay his Rent, nor do his Services, as ſuit, *&c.* to his Lord as he ought to do, nor hath ſufficient Goods or Chattels upon the Land to be diſtrained for the Rent or Services behind; but ſuffereth the Lands to lie freſh, not occupied for two years following together; then the Lord of whom the Lands are holden, may have the writ againſt the Tenant, and if it be found for him, he ſhall recover the land, if the Tenant will not find Sureties to pay the Rent then after; and that writ is of ſuch form:

Tenant in Dower ſhall have a *Ceſſavit*, and lie the ſeiſin in her husband: 1. E. 1. *Ceſſavit* 54. 43 E. 3. 15. 9 H. 7. 16. He for life ſhall have *Ceſſavit*, but not Leſſee for years, for that is a *Precipe*. 22 *R.* 2. *Ceſſavit* 2. 43. *Ceſſ.* of a Rent. 5 H. *Ceſſavit of Advowſon*; 23 E. 3. *Ceſſavit* 48. 46. 43. E. 3. 15. 20.

Rex Vic. &c. *Pracipe* A. *quod*, &c. *redd.* B. *unum meſuagium*, &c. *quod idem* A. *de eo tenet per certa ſervitia, & quod ad ipſum* B. *reverti debet per formam Statuti de communi Conſilio regni noſtri inde proviſi, eo quod prædict.* A. *in faciend. prædict. ſervitia per biennium jam ceſſavit, ut dicit*, &c.

And that writ is given by the Statute of *Weſt.* 2. *cap.* 21. and may be brought in the *Per*, *Cui* and *Poſt*.

The *Per* thus: *In quod idem* A. *&c. niſi per* C. *qui illud dimiſit, qui illud de præf.* B. *tenuit per certa ſervitia, & quod ad ipſum* B. *&c.* (uſque ibi) *proviſi, eo quod prædict.* A. *vel eo quod prædict.* C. *in faciend. prædict. ſervitia per biennium jam ceſſavit.* 43 E. 3. 4. The ſeiſin was alledged in the Feoffor and the Ceaſe in the Feoffee, 39 E. 3. Br. *Ceſſ.* 19 acc.

And it ought to be alledged in the writ by whom the Ceaſer was.

And in the *Per* and *Cui* thus: *In quod*, &c. *niſi per* C. *cui* D. *illud dimiſit, qui illud de præfat.* B. *tenuit*, &c.

And in the *Poſt* thus: *In quod*, &c. *niſi poſt dimiſſionem quam* A. *qui illud de præfat.* B. *tenuit per certa ſervitia inde fecit* A. *de* E. *& quod ad ipſum* B. *reverti debet, eo quod prad.* &c. *ut dicit*, &c. *Et unde queritur*, &c. *niſi*, &c. Note that if the Feoffee himſelf ceaſe, the writ ſhall not be in the *Per* but general, cont. the diſſeiſin

If the Feoffor ceaſe before the Feoffment, ſo if the Diſſeiſee ceaſe before the Writ ſhall be in the *Poſt*, 21 E. 3. 44. Br. *Ceſſ.* 17.

And there is another form of *Ceſſavit*, without making mention of any Entry, thus:

Pracipe W. *de* F. *&* A. *uxori ejus quod*, &c. *reddant Abbati de* S. *duo meſuagia, quæ* I. *de* B. *de eo tenuit per certa ſervitia, &*

& qua ad ipſum Abbatem, &c. *eo quod prædict.* W. *&* A. *in faciend*, &c.

And the *Ceſſavit* lieth for ſuit of Court; but the Donee in tail ſhall not have a *Ceſſavit* againſt the Tenant in tail: but if a man maketh a gift in tail, the remainder over in Fee unto another, or unto the right heirs of the Tenant in tail, there, in that caſe the Lord of whom the lands are holden *immediatè*, ſhall have a *Ceſſavit* againſt the Tenant in tail, becauſe that he is Tenant to him, *&c.*

44 E. 3. 27.
24 H. 6. 15.
19 E. 2. *Ceſſ.* 30.
28 E. 3. 95.
ib. 34, & 35.
33 H. 6. 53.

ac. but there it is ſaid, that if the Tenant ceaſe, and makes a gift in tail, that the Lord may have *Ceſſavit* in the *Per.*

And if a man ceaſe to pay his Rent and Services for two years, and incloſe the land, ſo as the Lord cannot diſtrain, if he break not the gates, or the hedges of the land which make the incloſure, the Lord ſhall have a *Ceſſavit*, although the Tenant hath ſufficient Cattel upon the Land to be diſtrained for the Rent. For the Land ought to be open, and alſo there ought to be ſufficient to diſtrain for the Rent, *&c.* But the land is not open to his diſtreſs, if there be not ſufficient upon the lands to his diſtreſs, *&c.* and ſo open to his diſtreſs, is a good plea, without ſaying more in ſuch caſe, *M.* 2 *H.* 4, 5.

20 E. 4. 1. & 2.
37 H. 6. 45. he pleads that the Land was ſufficient to his diſtreſs without ſaying *overt* and good:
2 H. 4. 5.
35 H. 6. *Ceſſ.* 7. *ac.*
35 H. 6. *Ceſſ.* 7. *ac.* but if a man occupy at will, his goods are ſufficient
3 E. 2. *Avow.* 206. *Br. App.* 20.

And if the cattel of a ſtranger do eſcape into the land, thoſe cattel are not ſufficient or overt to his diſtreſs: but if they be the Tenants cattel, it is otherwiſe.

If three men hold by one entire Rent, as by a Horſe, and the Lord doth recover two parts of the land againſt two of them, and the third findeth Sureties, *&c.* the whole Rent is extinct by that recovery.

And a man ſhall not have one *Ceſſavit* for lands which are holden by ſeveral Services; but he ought to ſue ſeveral writs.

3 E. 3. 47. *Ceſſavit* 40.
4 H. 6. 29.
10 H. 7. 24.
45 E. 3. 27.
14 H. 6. 25.
48 E. 3. 4.

If the Lord do diſtrain pendant his writ of *Ceſſavit* againſt his Tenant, the writ ſhall abate.

And the Lord ſhall have a writ of *Ceſſavit* againſt Tenant for life, where the remainder is over in Fee to another.

The quantity of the Service is not traverſeable in a *Ceſſavit*, but the ſame ſhall be taken by proteſtation.

48 E. 3. 4. *Ceſſavit* before ſeiſin: 32 E. 3. *Wilby Ceſſ.* 42.

The ſeiſin of the Services is not traverſeable in a *Ceſſavit*, but in *Ceſſavit* generally the tenure is traverſeable.

The Aunt and the Neece ſhall not joyn in *Ceſſavit* for a Ceaſer made before the title accrued to the Neece: but for a Ceaſer in both their lives they ſhall joyn in a *Ceſſavit*.

And

And a man may have a *Ceſſavit* againſt ſeveral perſons, and ſeveral Tenants by ſeveral *Pracipes*, &c. but not by one *Pracipe*. 20 E. 3. *Ceſſ.* 47. 11 E. 3. *Ceſſ.* 50.

A *Ceſſavit* doth not lie for him in the reverſion againſt Tenant for life, nor againſt Tenant in dower, but againſt Tenant by the curteſie by the Lord Paramount, becauſe he is Tenant to the Lord Paramount, *Tamen Quare* of that caſe. But Tenant by the curteſie, Tenant in dower, or Tenant for life ſhall have a *Ceſſavit* againſt the Tenant who ceaſeth. 13 E. 2. *ib.* 51; 26 E. 3. *Ceſſ.* 61. 7 H. 4. 20.

It is a good Plea in a *Ceſſavit* to ſay that he did not ceaſe for two years before the Writ brought.

And by the opinion of *Thorpe* and *Hankford*, a man ſhall not have a *Ceſſavit* againſt an Abbat or a Prior of the lands of their foundation: but I know no difference but that the Lord ſhall have a *Ceſſavit* againſt an Abbat or a Prior as well as againſt others, of the Lands which he holdeth of them by Rents or other Services: but for the lands which they hold in *Frankalmoign* a *Ceſſavit* doth not lie for not doing the Service, neither doth a *Ceſſavit* lie for not doing homage or fealty. 18 Aſſ. 1; *Br. Ceſſ.* 20.

And if a man holdeth lands in ſeveral Counties by one Tenure and one Service, if he ceaſe, *&c.* a *Ceſſavit* doth not lie. *Quod vi. M.* 18 *E.* 3. *t. Aſſiſe.*

And there is another Writ of *Ceſſavit* grounded upon the Statute of *Weſtm.* 2. *cap.* 41. That if a man give Land unto a Religious Houſe, or unto another to find a Chaplain to ſing Divine Service, or to find certain Tapers to burn before ſuch an Image, or to diſtribute certain bread and beer every week unto poor men. Now if theſe Services be not done for two years, nor ſufficient diſtreſs upon the lands for the time to diſtrain for thoſe Services, then he of his Heir who gave the lands, ſhall have a Writ of *Ceſſavit*, thus:

Rex Vic. &c. *Præcipe* S. *Epiſcopo* Wigorn. *quod*, &c. *reddat* H. *Comiti* D. *unum meſ.* &c. *in villa de* W. *quod* M. *nuper Comes* D. *fraudi prad.* H. *cujus hæres ipſe eſt, dedit* W. *quondam Epiſcopo* W. *& ſucceſſoribus ſuis Epiſcopis loci prad. ad celebrandum annuatim obitum* I. *fratris & matris prad.* T. *& etiam obitum ejuſdem* T. *& R. de* H. *poſt eorum deceſs. Et quod ad præf. Comitem reverti debet performan*, &c. *in quod prad. Epiſcopus in celebrand. obitum prad. per biennium jam ceſſavit, ut dicit*, T. &c.

Et aliter pro Cantaria: Præcipe Abbati de N. *quod*, &c. *reddat* B. *& C. unum ejus tenem meſ.* &c. *quod* R. *proavus prad.* C. *cujus hæres ipſe eſt, dimiſit* E. *quondam Abbati de* N. *vel eidem Abbati & ſucceſſ. ſuis Abbatibus de* N. *ad inveniend. quendam Canonicum pro animabus anteceſſ. & ſucceſſ. ejuſdem &c. in Abbatia de* N. *divina celebrant. Et quod ad præf.* B. *&* C. *reverti debet per*

formam ſtatuti de communi Conſilio regni noſtri ſuper hujuſmodi dimiſſ. proviſi, eo quod prad. Abbas in inveniend. prad. Cantarium per biennium jam. ceſſ. ut dicit; & niſi, &c.

And the like Writ may be ſued againſt a Parſon for Lands given to his Predeceſſor in Fee, to ſay Divine Service in ſuch a Chapel from three weeks unto three weeks.

And ſo a man ſhall have ſuch Writ for lights, or for drinking for the Poor, or other Almſdeeds, if the ſaid Almſdeeds be withdrawn for two years together.

And where a Religious man, or other ſpiritual perſon, bringeth that Writ of *Ceſſavit*, it ſhall not be ſaid in the Writ, *Quod clamat eſſe jus & hereditatem ſuam*, &c.

And a man ſhall have a *Ceſſavit* for not doing of ſeveral things which he ought to doe: thus:

Præcipe A. &c. quod, &c. reddat B. &c. quod T. quod prædeceſſus prædict. B. dedit W. quondam reſtori, &c. & ſucceſſoribus ſuis reſtoribus, &c. ad inveniend. quendam Capellanum divina [210] *pro animab. anteceſſ. ejuſdem T. in Eccleſ. &c. celebraturum, & duos cereos unius cerei tempore, quo Miſſa illa dicitur. Et quod ad ipſum B. reverti debet, eo quod prædict. &c. in inveniend. prad. Capellanum, & cereos per biennium jam Ceſſavit, &c.*

And the like Writs may be made in the *Per*, *Cui* and *Poſt*.

There is another Writ of *Ceſſavit* founded upon the Statute of *Glouceſt. cap. 4.* where a man giveth certain lands in Fee farm, to find him certain eſtovers to burn in the Winter, *&c.* or clothing, or to pay the fourth part of the value of the land yearly, and afterwards he ceaſeth, and lets the land lie freſh, not manured for two years together; then he or his heir who gave the land, ſhall have the Writ of *Ceſſavit* which followeth, *viz.*

Rex Vic', &c. Præcipe A. quod, &c. reddat B. annum maſ. &c. quod idem B. ei dimiſit ad feodi firmam, reddendo inde per annum eidem B. tertiam partem vel quartam partem veri valoris meſuag. prædict. & quod ad ipſum reverti debet per formam Statuti de communi conſilio regni noſtri inde proviſi, eo quod prad. A. in ſolutione prædict. firm. per biennium jam Ceſſ. ut dicit, & niſi, &c.

And in the *Per* thus: *Et in quâ idem A. non habet ingreſſ. niſi per E. patrem prad. B. cujus hæres ipſe eſt, qui illud ei dimiſit ad feodi firmam.* Vel ſic in the *Per* & *Cui*: *Niſi per D. cui prad. B. vel E. pat. prad. cujus hæres ipſe eſt, illud dimiſit ad feodi firmam.*

And

And in the *Poſt* thus: *Niſi poſt dimiſs. qui prad.* B. *vel* C. *fua. pradict.* B. *cujus hares ipſe eſt, inde ſecit* D. *ad feodi firmam*, &c. *ceſſ. ut dicit, & unde queritur*, &c. *& niſi*, &c.

B And if a woman give lands in Fee-farm, rendring to her the moiety, or the third part of the value, and afterwards taketh Husband, and the Tenant ceaſeth for two years, and ſuffereth the land to lie freſh, and doth not pay the Rent; the husband or wife ſhall have a Writ of *Ceſſavit*, and the Writ ſhall ſuppoſe *Quod ad pradict. A. & B.* (his wife) *reverti debet*, and not to the wife onely.

C And note that theſe gifts in Fee-farm, to render the third part, or the fourth part, or to find a Chaplain to ſay divine Service, or to find him clothing or eſtovers, or to diſtribute, &c. upon which a Writ of *Ceſſavit* lieth, it behoveth that they were made before the Statute of *Quia emptores terrarum*, &c. upon which Feoffments a Tenure is reſerved and implied in the gift. But if a man at this day after the Statute of *Quia emptores*, will give lands in Fee-farm to render the third or the fourth part of the value of the land, or to find a Chaplain, &c. if the Tenant ceaſeth, &c. the Donor or his heir ſhall not have a writ of *Ceſſ.* becauſe there is not any tenure betwixt them. *Quod vide M.* 45 *E.* 3. *t. Ceſſ.*

But if a man giveth lands in tail at this day to find a Chaplain, or to render a third part to the yearly value, or to find eſtovers yearly, if the Tenant ceaſeth of theſe Services, it is a doubt whether the Donor ſhall have a *Ceſſavit* to recover the lands.

And it ſeemeth that the Donor ſhall have a *Ceſſavit*: for a writ of *Ceſſavit* is given by the Statute of *Weſt.* 2. *cap.* 41. for lands given to find a Chaplain, or to find Tapers, or diſtribute alms to poor men. But then it ſeemeth that the ſame is intended of gifts in Fee-ſimple, becauſe that the Statute of *Weſtm.* 2. *cap.* 41. ſaith:

That an Aſſiſe ſhall lie for the Donor or his Heir to demand the Lands ſo given in demeſn, as it is appointed in the Statute of Gloceſter of tenements demiſed to dure, or render the fourth part of the value, or more, and upon which feoffments a tenure was reſerved and implied, becauſe the Statute of Quia Emptores, *&c. was made after the Statute of* Weſtm. 2.

And alſo before the Statute of *Quia emptores terrarum.* If a man make a Feoffment in Fee, and doth ſay of whom the Feoffee ſhall hold, &c. then the Feoffee ought to hold of the Feoffor and his heirs. By which it appeareth, that if a man at the time of the making of the Statute of *Weſt.* 2. give lands to hold in Fee-farm, rendring the value, or the third

part, &c. that he held of the Feoffor and his heirs, although that no tenure was expreſſed therein. And the Statute of *Glouceſt.* was made *Anno* 6 *E.* 1. and the Statute of *Weſtm.* 2. made *Anno* 30 *E.* 1. and the Statute of *Quia emptores terrarum*, was made *Anno* 18 *E.* 1. And therefore if a man maketh a Feoffment in fee at this day, to find Tapers burning, or to render the third part of the value, or the like Services, he ſhall have an Action of Covenant upon that Feoffment, if it be made by Deed indented, and no other remedy for the ſame, as I conceive.

And if land be given before the time of memory to find a Chaplain to ſing in his Chapel within his Manor every week. Now by the Statute no man ſhall have a *Ceſſavit* for the Ceſſor of ſuch ſervice, but the Donor or his Heir: but upon that ſpecial matter, he ſhall have a ſpecial Writ for him who is ſeiſed of the Manor, if he and his Anceſtors have been ſeiſed of the Manor time out of mind, againſt him who ought to doe Service. *T. Anno* 7 *H.* 2.

And a *Ceſſavit* doth not lie againſt an Abbat or Prior for a Ceſſor of Services of Lands which they hold in *Frankalmoigne*, becauſe no Service certain is expreſſed in the Gift. Alſo it appeareth before the Statute, that the Lord could not have a *Ceſſavit* againſt the Tenant, but that he may ſeiſe the Lands for the Arrearages of the Rent or Services by Judgment of the Court, if it were found that they were behind, *Quod vi. P.* 20 *H.* 3. But at this day he cannot doe ſo, but bring a *Ceſſavit*.

Writ of Contra formam Collationis.

Vide 2 & 3 *Mr. Dyer* 209. Yet it ſeems by Br. *Alienation* 15. that Biſhop, Dean, and Chapter, and other who are not Religious, are not within this Statute. 40 E. 3. 27. The Writ doth not lie but where the Land is given in *Frankalm.*

THE Writ of *Contra formam Collationis* lieth, where a man giveth Lands or Tenements to an Abbey, or other Houſe of Religion before the Statute of *Quia emptores terrarum*, to hold of him in *Frankalmoigne*, and afterwards the Abbat or the Covent do alien the ſame Land unto another Fee.

The Donor or his heir may ſue that Writ of *Contra formam Collationis*, and that Writ always ought to be ſued againſt the Abbat who aliened or his Succeſſor, and not againſt the Tenant of the Land. But when he hath recovered the Land againſt the Abbat or his Succeſſor, then he ought to ſue

sue forth a *Scire facias* against the Tenant of the Freehold of the land, and the Tenant may plead in bar matter, which may prove that the Demandant hath no title, or that he B hath released his title. And if he who recovereth by the *Contra formam Collationis* doth enter upon him who is Tenant of the Freehold of the Land, then it seemeth the Tenant shall have an Assise against him.

C And that Writ of *Contra formam Collationis*, lieth onely for him or his heirs, who gave the land in *Frankalmoigne*, and D not by any stranger. But if he who ought to have the action dieth, and doth not bring any action for the same, yet his heir may bring the action for to recover the land. For the alienation doth give right and title to him who gave the lands, or unto his heirs for to recover the lands, and to have the lands again for that alienation. And it lieth against the Successor upon an alienation made by his Predecessor. And yet such Writ brought against the Successor, upon the alienation made by the Predecessor was abated. *H.* 17 *E.* 3. *Contra formam Coll.*

D But yet notwithstanding it seemeth the Writ well lieth, because that the right is given to him who gave the lands, and unto his heirs to have the lands again by the Statute, and that right cannot die. For the heir shall have the action upon the alienation made in the life of the father, because the right of the action doth descend, and by the same reason the heir of the Donor shall have the action against the Successor upon alienation made by the Predecessor, because the right doth accrue to the Donor or his heir by alienation, for which cause it is reason that he have the action against the Successor to recover that right, and to prove the same; the form of the Writ in the Register is such:

12 H. 4. 17. *Hauk-ford cont.* to Fitz. here.

Rex Vic', &c. *Præcipe Abbat. de* N. *&c. quod*, &c. *reddat* B. *unum messuag'*, &c. *quod eidem domui collatum fuit in liberam eleemosynam per prad.* B. *vel per* H. *patrem prad.* B. *cujus hæres ipse est, & quod per alienationem per ipsum Abbatem, vel per* R. *quondam Abbatem de* N. *prædecess. prædict. Abbatis contra formam collationis prad. inde factæ in feodum ad præjud.* R. *reverti debet, ut dicit*, &c. *nisi*, &c.

And that Writ of *Contra formam Collationis* doth not lie, although the Abbat alien in Fee, *&c.* but where the Abbat and Covent in Fee, *&c.* 21 H. 4. 68. *Hauk-ford.*

E And if a man do recover in value lands against an Abbat, who entreth in the Warranty and looseth, *&c.* the Founder shall have a *Contra formam Collationis* upon the same, as it appeareth in the book, *M.* 45 *E.* 3. 18. Old. Ass. 14. It lieth of a Rent.

28 E. 3. *Contra form. collation.* 6.

If an Abbat and Covent alien an advowſon in Fee, at the next avoidance the Founder or his heir may preſent unto the advowſon, becauſe they cannot ſue a *Contra formam collationis.*

And if an Abbat and Covent alien the lands which are given by the King in *Frankalmoigne*, ſome ſay that the King may enter: but it ſeemeth that he ought for to ſue forth a *Scire facias* upon an Office found of the ſaid alienation: See the Caſe, *M.* 45 *E.* 3. 18.

And that Writ of *Contra formam collationis* is given by the Statute of *Weſtm.* 2. *cap.* 41. and the Proceſs in *Summons, Grand Cape* and *Petit Cape.*

43 H. 6. 6. *contr.*

And a Writ of *Contra formam collationis* lieth as well for land which was not given for the foundation of the Monaſtery, if it were given in *Frankalmoigne*, as for lands of the foundation; but it ought for to be given in *Frankalmoigne*

40 E. 3. 27. before the Statute of *Quia Emptores*, &c. For a man could not give lands after the Statute of *Quia Emptores*, &c. unto an Abbat or Prior to hold in *Frankalmoigne*, becauſe he ought to hold of the Lord *Paramount*, of whom the Tenure held before. But the King at this day may give lands in *Frankalmoigne* to an Abbat or Prior, for that he is not bound by the Statute. And alſo the King may licenſe his Tenant to give lands unto an Abbat or Prior in *Frankalmoigne* in Fee ſimple, to hold in *Frankalmoigne*; for he may diſpenſe with the Statute, and grant ſuch authority to his Tenant if he will. But it ſeemeth another Lord cannot grant ſuch Licence to his Tenant, by reaſon of the Intereſts of the Lord *Paramount*: but the King and all the Meſne Lords together may get Licences unto the Tenants *Paramount*, who have the Fee of the Lands, that they may alien the ſame to an Abbat or Prior to hold of him in *Frankalmoigne*, or to grant the ſame unto a lay perſon, to hold of him by certain ſervices, becauſe that the Statute of *Quia Emptores*, &c. was made only for the advantage of the Lords, and therefore they all may diſpenſe with the Statute, which ſee 2. *contra formam collationis*, *Lib. d'Ent.* 119. And there it appeareth, that the heir ſhall have the action againſt the Successor of the Abbat, who alienes in the time of his Anceſtor.

Writ of Formedon in the Descender.

L. THE Writ of Formedon in the Descender is grounded upon the Statute of *Westm.* 2. *cap.* 1. and lieth where a man giveth Lands to one, and the heirs of his body begotten: Or unto a man or a woman, and to the heirs of their bodies begotten: Or unto a man and a woman who is his cousin in Frank-marriage, by force of which Gift they are seised, and afterwards he alieneth those Lands, or is disseised of them, and dieth, his heir shall have that Writ of Formedon in the Descender to recover the Lands given in tail. [212]

And so upon every Gift in tail of Lands or Tenements, if the Ancestor doth alien the Lands or Tenements, or be disseised or deforced thereof, and dieth, he who is heir unto the Lands by force of the Gift, shall have that Writ of *Formedon in the Descender*, against him who is Tenant of the Lands or Tenements, or Pernor of the profits of the same Lands or Tenements. But that Writ against the Pernors of the profits is given by the Statute, of *Ann* 1 *H.* 7. *cap.* 1.

A And in special Case, a man may have a *Formedon in the Descender* of the profits append in any Lands or Tenements, or issuing out of any Lands or Tenements: As if a man grant 20 *s.* or 20 *l.* issuing out of any Land or Tenement, unto a man, and the heirs of his body begotten; or unto a man in Frank-marriage with his daughter. Now if the Donee alien that Rent, or is disseised of the Rent, and dieth, his heir who is his son or daughter, shall have the Writ of *Formedon in the Descender* of that Rent.

B And so if a man grants the moiety of the profits arising out of his Mill unto another man, and the heirs of his body, and the Donee dieth, and his heir is deforced of the profits, the heir shall have a Formedon in the Descender for those profits, and the form of the Writ is such:

Rex Vic', &c. *Præcipe W. Magistro Hospitalis S.T. Martyris de S. quod*, &c. *reddat* I. C. *medietatem exituum provenientium de duobus molend. ipsius Magistri in* M. *quam* B. *quondam Magister Hospitalis*, &c. *dedit W. de* C. *& hæredibus de corpore suo exeunt. & quæ post mortem*, &c.

And so it seemeth, That if a man granteth to one and the heirs of his body, pasture for twenty Oxen, or for an hundred Sheep, &c. and the Donee die, and his son, who is his heir, is deforced thereof, then he shall have a Formedon in the Descender, and the Writ shall be:

Rex Vic', &c. *Pracipe*, &c. *quod reddat* A. B. *pastur. ad triginti boves, vel ad centum oves in centum acris terra in* M. *quam*, &c.

But if a man granteth Common of Pasture to one and the Heir of his body begotten, which hath Cattel, and the Donee dieth, and the heir is deforced of the Common, the heir shall not have a Formedon in the Descender of the Common, but a *Quod permittat*, in the nature of a Formedon, and shall count upon the Gift and the special matter. But the Writ of Formedon is an action Auncestrel. For if he who is seised by force of the tail be disseised of the Land, he shall have an Assise of *Novel Disseisin*, or an action of Trespas at his pleasure, and not a Formedon. And what manner of Gift shall be said a Gift in tail, and what not, appeareth by Mr. *Littleton* in his *Chapter of Estate tail*, and therefore it is not necessary to express the same here. But the Forms of the Writs of Formedon are many, as appereth by the Register, thus:

Rex Vic', &c. *Pracipe* A. *quod*, &c. *reddat* B. *manerium de* N. *cum pertin. quod* C. *dedit* D. *& E. uxori ejus, & hared. de corporibus ipsorum* D. *& E. exeuntibus, & quod post mortem prad.* D. *& E. præfat.* B. *filio & haredi prædict.* D. *& E. descendere debet per formam donationis prædicti ut dicit, & nisi*, &c.

And if the Gift be made in Frank-marriage, then the form of the Writ is such: *Quod* C. *dedit* B. *in liber. matrim. cum fil. ejusdem* C. *& quod post mort. prædict.* D. *& E. præf.* B. *fil. & hared. prad.* D. *& E. descend. debet*, &c.

And in his Writ of Formedon he ought so to make mention of every man who was seised by force of the tail, and to name him Son and Heir in his Writ, in this manner: *Et quod post mortem prædict.* D. *& E. & ipsi filii & hæredes eorundem* D. *& E. præf.* B. *filius & hæres ejusdem* F. *descendere debet*, &c.

But if any of the Heirs in tail were not seised by force of the tail, but overlive their father, and die before that they enter into the Land, or have any seisin thereof: then they need not for to name them Heirs in the Writ, but onely sum in this manner: *Et quod post mortem prædict.* D. *& E. filii eorundem* D. *& F. filii prædict.* E. *præfat.* B. *filio prædicto* F. *& consanguineo & hæredi prad.* D. *descendere debet*, &c.

And so he ought always to make the Demandant Cousin and Heir, or Son and Heir to him who was last seised of the tail, as the Case is: and the surest way for the Demandant is, to make every man who is named in the Writ, Son and

Vi. 2 Eliz. Dyer 216.

32 H. 6. 36.

3 H. 4. 19.

Heir

Heir in the writ, although they were not seised of the lands by force of the tail, for it is not material whether they were seised or not, although he name them Heir in the writ, *quod vide Anno* 8. and 11 *H.* 6.

And if Tenant in tail hath issue two Sons, and dieth, and a stranger abateth, and entreth into the Land, and afterwards the eldest Son dieth before he entreth into the land, the youngest Son shall have a writ of Formedon in the Descender, and needeth not to name his eldest brother heir to his father in the writ, but onely Son, because he never had seisin of the land, but onely held the Estate: but if the eldest brother had entred, and was seised by force thereof, and died without heir of his body, then the youngest Son who is his brother and heir, ought to mention the eldest in the writ, and to name him Son and Heir to his father, and to make himself brother and heir unto him.

A And if the heir in tail be seised by force of the tail or not, and after enter into Religion, and be professed, then his heir shall have the writ of Formedon in the Descender in such form:

Et quod post mortem prædicti D. *& postquam* E. *filius & hæres prædicti* D. *habitum religionis assumpsit, in quo habitu professus fuit, ut dicit, præfat.* B. *filio & hæredi ejusdem* E. *descendere debet*, &c.

But if the father maketh a feoffment in fee, or leaseth the land for life, and entreth into religion, and is professed: yet his heir shall not have a Formedon in the Descender, *quia habitum religionis assumpsit*, &c. during the father's life, because the father may lawfully give his lands during his life: and after the death of the father, he may bring the common Writ of Formedon, if he will, or that special writ, *quia habitum religionis assumpsit* at his election, as it seemeth.

B And if Tenant in tail goeth upon pilgrimage, and dieth in his journey, his heir shall have a Formedon against a stranger who entreth and abateth: and the form of the writ shall be:

Et quod post mortem prædicti D. *& postquam* E. *fil. & hær. prædicti* D. *iter peregrinationis arripuit versus* S. Jacobum, *in quo itinere obiit, ut dicit, præf.* B. *fil. & hær.* &c.

C And if Tenant in tail hath issue two daughters, and one of them hath issue a Son and dieth, and afterwards the Tenant in tail dieth, and a stranger abateth; now the daughter and the Son of the other daughter shall have a *Formedon* in this form:

Quod reddat B. *& C. unum messuagium quod* D. &c. *& quod post mortem prædicti* E. *&* F. *unius filiarum ejusdem* E. *præf.* B. *alterius filiarum*

filiarum prædict. E. *& B. filii prædict.* E. *& consanguin. & hæred. prædict.* E. *descendere debet*, &c.

And if Tenant in tail hath issue two Sons, and dieth, and the eldest Son entreth, and hath issue and dieth, and his issue entreth and dieth without issue of his body: then the youngest Son the Tenant in tail shall have such writ of Formedon, if he be deforced of the land.

Et quod post mortem prædict. D. qui E. *fil. & hæres ejus* D. *& fil. & hær. ejusdem* E. *præfat.* B. *filius prad.* D. *& consanguin. & hæredi prædict.* F. *descendere debet.*

And if a man give lands in tail unto a woman and the heirs males of her body, and of *R.* her late husband begotten by *R.* her husband, shall have a Formedon in this manner.

Quod C. *dedit* B. *quæ fuit uxor* R. *& hæredibus masculis de corpore ipsius* D. *& præfat. R. quondam viri sui exeuntibus. & quod post mortem prad. D. præf. W. fil. & hæred. ejusdem* D. *de corpore suo & corpore præd.* B. *procreat. descendere debet*, &c.

And if a man give lands to *R.* and unto the heirs which the said *R.* shall beget on his first wife, then the form of the Writ of Formedon is such:

Quod W. dedit R. *& hæred. quos idem* R. *de primo exorio procrearet; & quod post mortem prædict.* R. *& A. fil. G. quæ primo duxit in uxorem præf.* I. *filio & hæredi ejusdem* R. *de præf. A. primo exorti sui procreatis descendere debet*, &c.

And if a man give lands unto a woman and unto the heirs which he himself shall beget on the body of the said woman, and after they have issue between them two daughters, and one of them hath issue a daughter and dieth, and the the Donor and the Donee dieth, the Aunt and the Neece shall join in a Formedon for the land, if they be deforced thereof, and the writ shall be such:

Quod R. *dedit* N. *& hæred. quos idem* R. *de corpor. ipsius* N. *procrearet, & quod post mortem prædict.* M. *& A. unius filiarum ejusd.* N. *de corpore suo per præf.* R. *procreat. & præf.* N. *alterius filiæ ejusd.* M. *de corpore suo per præf.* R. *procreat. & præf.* I. *de* S. *filio prædict. & consanguineo & hæred. ejusd.* M. *descendere debet*, &c.

And if lands be given to a man and his wife, and to the heirs of their two bodies, and they have issue a Son and die, and the son is seised, and hath issue three daughters, which have issue and die in the life of their father, and after one of the daughters have issue, and claimeth in the life of the grand father, and afterwards the father and the three daughters die, the Coparcenors of the three daughters shall have a Formedon in such form:

Et quod post mortem prædi. R. & F. & W. fil. & hæred. eorund. R. & F. & A. M. & E. filiarum prad. W. & Sare fil. prad. M. profat. A. filiæ prædict. A. & Johan. fil. prædict. E. & W. alter filii prad. S. consanguinei & hæred. prad. Wilhelmi descendere debet, &c.

I And if lands be given to R. and *I.* and to the heirs of the body of *R.* begotten, and *R.* hath issue four daughters, and he and one of his daughters enter into Religion, and are professed, and *I.* dieth, and afterwards one of the daughters of R. dieth before they have any possession of the lands, and the other two daughters do survive, and are deforced of the land, they shall have a Formedon in such form:

Quod T. *dedit* R. & I. & *hæred. de corpore ipsius* R. *exeunt. & quod post mortem prædict.* I. & *postquam prædict.* R. & Grecia *uxor filiarum prædict.* R. *habitum religionis assumpser. & in quo habitu professi sunt, ut dicitur; de eisdem post mortem* E. *uxoris filiarum prædict.* R. *profat.* M. & A. *alii duabus filiabus eisdem* R. *post mortem* E. *uxoris filiarum prad

Quod A. dedit B. ad vitam ipsius B. & quod idem A. per finem inde in Curia Domini E. quondam Regis Angliæ avi nostri, coram C. & sociis suis tunc Justic. &c. per breve suum levari concessit D. & E. uxori ejus, habend. post mortem ejusdem B. eisdem D. & E. & hared. quos idem D. de corpore ipsius E. procrearet, & quod post mortem prædict. B. D. & E. præfat. F. filio & hared. prædict. D. & E. de corpore ipsius E. per præf. D. procreato, descendere debet per formam donationis, & finis prædict. ut dicit, &c.

Another Writ of Formedon in the Descender.

THere is another writ of *Formedon* in the *Descender*, which is called a writ of Formedon of Land, which he holdeth in Coparcenery, and that writ lieth properly, where Tenant in Tail dieth seised, and hath issue many daughters, and they enter, and make a division and partition of the land betwixt them, and one of the Coparceners after the partition doth alien her part and dieth, her heir shall have that manner of writ of Formedon; and the writ lieth for lands given in frankmarriage, as well as for other Lands given in tail.

And if Lands in Gavelkind be entailed and descend to many brethren, as heirs to their father, and they make partition betwixt them of the lands, and afterwards one alieneth his part and dieth, his heir shall have a Formedon of that which they held in parts, and the form of the writ is such:

Rex, &c. Præcipe A. quod, &c. reddat B. quatuor viginti act. terr. cum pertin. in D. quas una cum aliis quatuor viginti act. terr. cum pertin. in eadem vill. L. dedit T. in liber. mariag. cum I. filia prædicta L. & quam post mortem prædict. T. & M. fil. & unius hared. eorundem T. & I. qua illas tenuit in purparti suam, ipsam ut prædict. cent. & sexaginta acris terræ per partition. inter ipsam M. & R. sororem, ejusdem M. factum & alter hared. prædict. T. & I. inde fact. contingent. præfat. filio & hared. prædict. M. descendere debet, &c.

And if two Coparcenors be Tenants in tail by descent from their father or mother, and afterwards they make partition, and one Coparcenor hath issue and dieth, and the other Coparcenor dieth without issue, the heir of the Coparcenor who hath issue shall have a Formedon in this form:

Et quod post mortem prædict. T. & I. & K. filiæ & unius hared. eorundem T. & I. qua illas tenuit in purpartem suam, ipsam de prædict. centum & sexaginta act. terr. per partic. inter ipsam K.

&

A *& M. ſoror. ejuſdem K. fil. & alteram hæred. prad. T. & Linde ſall. contingent. & præf. M. præf. G. filio prad. M. & conſanguineo & hæred. prad. K. deſcendere debet*, &c.

And it appeareth by the Regiſter that a man ſhall have a Writ of Formedon of land which he held in partition by the name of the moiety in ſpecial caſe, as where two Coparcenors are daughters of Tenant in tail, and they make partition betwixt them of the land, and afterwards one ſiſter dieth without iſſue, and the other ſiſter alieneth the land, and hath iſſue and dieth, the iſſue of the Coparcenor who had iſſue, ſhall have a *Formedon* of all the land in tail in this form:

B *Rex Vic.* &c. *Præcipe* F. *quod*, &c. *reddat* H. 10. *Meſuag.* 30. *acr. terr. cum pertinentiis*, &c. *quæ* L. *dedit* A. *& hæred. de corpore ſuo exeuntibus, & quam poſt mortem prad.* A. *& M. fil. & unius hæred. ejuſdem* A. *quæ medietat. prad. meſuag. & terr. tenuit in purpartem ſuam, &* B. *fil. & alterius hæred. prædict.* A. *quam alteram medietatem eorundem Meſuagior. & terr. tenuit in purpartem ſuam, per partition. inde inter ipſos factam, quæ quidem* B. *dict. medietatem præf.* M. *contingent. poſt mortem ejuſdem* M. *ut ſoror & hæres ejuſdem* M. *tenuit, præf.* H. *filio & hæredi prad.* B. *deſcendere debet.* And the writ is good, becauſe by the death of one ſiſter without iſſue, the partition is made void, and the other ſhall have the whole land as heir in tail.

D And if a man give lands in tail unto *I.* his daughter, and to the heirs of her body, and *I.* hath iſſue two daughters and dieth, and they enter and make partition between them, and afterwards one of the daughters hath iſſue two daughters, and one of the two daughters hath iſſue four daughters and die, and afterwards the Aunt who was one of the daughters of the Donee dieth without iſſue, *&c.* and a ſtranger abateth; the four daughters, and the iſſue of the other ſiſter ſhall have a Formedon in ſuch form: [215]

Quod reddat tria Meſuagia, centum acr. terræ, & viginti acr. prati, & cent. ſolid. redditus, cum pertin. in N. *quæ una cum Manerio de* B. *cum pertinentiis*, A. *dedit* I. *filio ſuo & hæredibus de corpore ipſius* I. *exeunt. & quæ poſt mortem prædict.* I. *& C. fil. & unius hæred. ejuſdem* I. *quæ illam tenuit in purpartem ſuam, ipſam poſt mortem prædict.* I. *de prædict. Maner. Meſuag. terra, prato, & redditu per partitionem inter ipſam* C. D. *filiam & alteram hæredem ejuſdem* I. *inde facta contingent. & prad.* D. *& A. & E. fil. prad.* D. *præfat.* Margaret, Margery, Katherine, *& Conſtantine, filiabus prad.* A. *& T. filij prad.* E. *& conſanguineis & hæredi prad.* C. *deſcendere debent*, &c.

And

And if the moiety of any land be given to the husband and wife, and unto the heirs of their two bodies begotten, and they have issue four daughters, and die, and the fifth entereth and maketh partition betwixt them, and afterwards the two sisters die without issue, and the third sister aforesaid, and dieth without issue; the four sisters shall have a Formedon in this form:

Et quod post mortem prædictor. Rogeri & Agnetis, & Alic. fil. *junioris, & unius hæredis, eorundem* Rogeri & Agnet. *quæ idem in* Alicia jun. *diffium quartam partem tenuit in perquisitionem suam, ipsam de prædict. medietat. per partitionem inter ipsam & Isabel & Aliciam seniorem, & præf.* Matildam *filias & tres alias hæred. prædict.* Rogeri & Agnetis *uxoris ejus inde sufficm contingent. & prædict.* Isabellæ *fil.* Rogeri & Aliciæ *fœturis præf.* Matildæ *sœvri & hæredi ejusdem* Aliciæ *junior descendere debent*, &c.

And to make a full declaration of the Case of Formedon in the Descender, upon which the writ is founded, it is necessary to have the Pedigree made in the writ, which you shall see here following.

Henry Russel.
Elizabeth his wife.

Henry Russel.

John. *John.* *Alice.*

Justn.	*Maud*		*Margaret.*	
John.	married		*Will. Harper.*	
Gifford.	to *F.*			
Roger.	*Joan.*	*Thomasin.*	*Margery.*	*Isabel.*
	John.	*James.*	*Thomas.*	*Thomas.*
	Bure.	*Peures.*	*Cole.*	*Prevenben.*
Henry				*Ralph*
Gifford.				*Prevenben.*

Henry Russel gave land to *Henry Russel* and to *Elizabeth* his wife, to *Henry* their Son, and to the heirs of the said *Henry* the Son of his body, lawfully begotten, and died, and after *Henry Russel* the father and mother died, and *Henry Russel*, the

the Son was ſeiſed by force of the tail, and had iſſue *Joan*, *John* and *Alice*, and *Alice* had iſſue *Joan*, *Maud* and *Margerie*, and *Joan* was married to *John Gifford*, and had iſſue *Roger Gifford*, who had iſſue *Henry Gifford*, and *Maud* was married to *F.* and had iſſue, *Joan* married to *John Botreux*, *Thomaſin* married to *James Penros*, *Margaret* married to *Thomas Cole*, and *Iſabel* married to *Trevethen*, and *Iſabel* had iſſue *Ralph Trevethen*, and *Margaret* was married to *William Harper*; and *Henry Ruſſel* the Son died, and *John* his brother entred and was ſeiſed by force of the tail and died, and a ſtranger abated, and all the Heirs in tail are dead, but *Margaret Harper* the wife of *William Harper*, *Henry Gifford*, *Thomaſin* married to *James Penros*, *Joan Botreux* married to *Joh. Botreux*, and *Margery Cole* married to *Tho. Cole*, *Joan Margaret* and *Ralph* Son of the ſaid *Iſabel*; now theſe Coparceners ſhall joyn in the Formedon, and the writ ſhall be ſuch;

Rex Vic. &c. *Præcipe* Reginaldo Rees *quod*, &c. *redd.* Will. Harper *&* Margaret. *uxori ejus*, Henrico Gifford. Jacobo Penros *&* Thom. *uxor. ejus*, Johanni Botreux *&* Johan. *uxor. ejus*, Thom. Cole *&* Marger. *uxori ejus*, *&* Radulpho Treverthen, *manerium de* R. *cum pertin. quod* Henr. Ruſſel *dedit* Henrico *de* Ruſſel *&* E. *uxori ejus*, *&* Henrico *filio eorundem* Henr. *de* Ruſſel, *&* *hæred. de corpore ipſius* Henr. *filii* Henr. *eorum. &* *quod poſt mortem prædict.* Henr. *de* Ruſſel, *&* E. *&* Henr. *filii* Henr. *&* Johan. *filii &* *hæred. ejuſdem* Henr. *filii* Henr. *&* Johan. *fratris &* *hæred. ejuſdem* Johan. *filii* Henr. *&* Alic. *ſororis ejuſdem* Johan. *fratris* Johannis, *&* Johannæ *unius*, *&* Matildæ *alterius fil. ejuſdem* Aliciæ, *&* Rogeri *filii prædict.* Johannæ *fil.* Aliciæ, *&* Johannæ *unius filiarum prædict.* Matild. *præfat.* Margaret. *&* Wilhelmi *tertiæ filiarum prædict.* Aliciæ, Henrico Gifford *fil. prædict.* Rogeri *&* Thomaſinæ, Johan. *uxori* Johan. Margeriæ *uxori* Thom. *cæteris*, *filiabus prædict.* Matild. *&* Radulpho *filio prædict.* Iſabellæ *fil.* Matild. *&* *conſanguineo &* *hæred. prædict.* Johannis Johannis *defcendere debet*, &c.

[216]

Another

Another Writ of Formedon in the Deſcender, *called* Infimul tenuit.

THere is another manner of Writ of *Formedon* in the Deſcender, which is called *Formedon qui infimul tenuit*; and that writ lieth by one Coparcenor, or by one heir in Gavelkind of lands entailed, where they hold the lands entailed in Coparcenery without any partition made between them of the ſame, and afterwards one Coparcenor doth alien her part unto a ſtranger in fee, and dieth without iſſue, or hath iſſue and dieth; or if he dieth ſeiſed, and hath iſſue, and a ſtranger doth ouſt the iſſue, or the other Coparcener doth put out the iſſue, the iſſue, or he who is heir to the Tail of thoſe Lands, ſhall have that writ of *Formedon* againſt the ſtranger, or the other Coparcenor, who deforced her of the Land.

Rex Vic. &c. *Præcipe Abbati* Weſtmon. *&c. quod reddat* B. *&* I. *uxori ejus duas partes triginta ſolidat. redditus, mille albarum panum pretii* 20. *ſolid. & quinque lagenarum cervic. pretii decem denariorum cum pertin. in* B. *quas una cum tertia parte earundem ſolidat. redditus, panis & cervic. cum pertin. eadem villa,* A. *dedit* G. *&* B. *uxori ejus, & hæred. de corporibus ipſorum* G. *&* B. *exeuntibus, & qua poſt mortem præd.* G. *&* B. *&* R. *filii & hæred. eorundem* G. *&* B. *&* T. *filia & hæred. ejuſdem* R. *&* W. *filii & hæredis ejuſdem* T. *&* M. *filii & unius hæred. ejuſdem* W. *qui illas duas partes, & diſt. partem cum* K. *filia & altera hæredum prædict.* W. *infimul tenuit, &* D. *fil. & hæred. ejuſdem* M. *& prædict.* K. *amit. prædict.* C. *&* F. *ſil. ejuſdem* K. *præfat.* I. *fil. prædict.* F. *& conſanguinea & hæred. prædict.* D. *deſcendere debent per formam donat. prad.* &c.

And by that writ it ſeems, That *I.* is ſeiſed of the third part of thoſe Rents; and bringeth this writ of two parts of that Rent.

And there is another writ of *Formedon* and *Infimul tenuit*, where he ſhall make his demand by the name of the moiety and that is where one Coparcenor is deforced of her part, and the other Coparcenor is in poſſeſſion of her part, and the writ is ſuch:

Præcipe Abbati Weſtmon. *quod,* &c. *redd.* B. *&* I. *uxori ejus medietat. triginta ſolidat. redditus, & reddit. mille alb. panum, pretii decem ſolid. & quinque lagenarum cervicia, pretii decem denariorum,* &c. *cum pertin. in villa* Weſtm. *quam una cum alia medietate eorundem triginta ſolidat. redditus, &*

reli-

redditus panis & cervisiæ cum pertin. in eadem villa, A. dedit G. & B. uxori ejus, & hæred. de corporibus eorundem G. & exeuntibus, & quam post mortem prad. G. & B. & F. filii & hæred. eorundem G. & B. & T. fil. & hæredis ejusdem F. & W. filii & hæred. ejusdem T. & R. filii & unius hæred. ejusdem W. quam illam & prad. aliam medietatem cum M. filia & altera hæred. prad. W. infimul tenuit & E. filii ejusdem R. præfat. I. fil. pradict. E. & consanguineo & hæred. pradict. R. descendere debet, &c.

C And it appeareth by that Writ, that one Coparcenor ſhall have the Writ of *Formedon* in the *Infimul tenuit* againſt a ſtranger upon the poſſeſſion of his Anceſtor, without naming the other Coparcenor who hath her part in poſſeſſion.

And if a man do bring a *Formedon* in the Deſcender upon the ſeiſin of his brother, and as heir to his brother; he ſhall not mention in the Writ, that his brother is dead without iſſue: but if a man bring a *Formedon* in the Deſcender as couſin and heir to him, he ought to mention in the Writ how he is couſin and heir to him, and he ought to make himſelf heir unto him who was laſt ſeiſed, and that by the ſame Writ.

D And a man ſhall have a *Formedon* in the Deſcender upon a gift in tail made before the Statute of *Donis*, if the alienation be made after the Statute, and not before.

E And if Lands in tail deſcend to two Coparcenors, and one entreth into the whole, and the other hath iſſue and dieth, and ſhe which entreth into the whole dieth without iſſue, the iſſue of the other Coparcenor ſhall have ſeveral Writs of *Formedon*, one of the ſeiſin of the Grandfather, and in that Writ he ſhall not ſay *Infimul tenuit*, &c. becauſe her mother was never ſeiſed but of the other moiety of the land of the ſeiſin of her Aunt, the Writ ſhall ſay, *Qui infimul tenuit* with her mother, for that ſeiſin was a ſeiſin to her
F mother, if ſhe would, *&c.* And if one Coparcenor after the death of the Anceſtor enter into the whole, and alieneth in fee, and dieth without iſſue, the other Coparcenor ſhall demand the moiety as heir unto her father, and the other moiety as heir unto her ſiſter.

A And if the heirs in tail of Gavel-kind bring a *Formedon* in the Deſcender, the Writ ſhall be of common form, as the Writ of *Formedon* brought by ſiſters, and in the Count he ſhall ſhew the cuſtome.

B A *Formedon* ſhall be brought of Gorſ. but not of an Advowſon.

And if Tenant in tail be indebted to the King in the Ex-

chequer, and dieth; and his heir entreth into the Lands, and is diſtrained in the entail Lands for the King's debt; Now if the Fathers Executors have Aſſets, or Goods, or if the Father hath Lands in Fee-ſimple in the hands of others, which he hath aliened; the heir in tail ſhall have a ſpecial Writ unto the Treaſurer and Barons of the Exchequer, rehearſing the whole matter; commanding them that they do enquire thereof; and, if it be true, that they do forceaſe to charge him upon the entailed Lands, and the Writ is ſuch:

Rex Theſaurario & Baron ſuis de Scaccario ſalutem. Monſtravit nobis R. *filius* I. *de* W. *quod licet ipſe non tenet terras ſeu tenement. quæ fuer. prædict.* I. *prout* 12 *meſuag. &* 2 *carucat. terr. in* L. *cum pertin. quod præd.* I. *&* C. *uxor. ejuſ. mat. præd.* R. *quorum hæres ipſe eſt, tenuer. ſibi & hæred. de corporibus ipſorum* I. *&* C. *exeuntibus ex dono & conceſſione* H. *de* C. *per finem inde in Cur. Domini* E. *&c. avi noſtri levatum, & quæ poſt mortem prædict.* I. *&* C. *ad manus ipſius* R. *virtute finis præd. devener. vos nihilomin. ipſum* R. *in terris & tenement. præd. quod ſic tenent. in feod. tallrato, pro centum libris nobis pro arrerag. extent. manerii de* Offord. *præfat.* I. *per vos poſtquam gubernacula regni ſuſceperimus, & ten. præd. dictis* I. *&* C. *in feod. tallato ſic data & conceſſ. fuer. commiſs. reddend. omiſs. tam præd. hæred. prædict.* I. *quam tenent. terrar. & tenement. quæ fuer. ipſius* I. *in feodo ſimplici, qui de debitis ſuis de jure debent onerari & ſufficient. habeant, unde debita illa levari poſſint, diſtringitis, & ipſum ea occaſione inquietatis multipliciter & gravatis minus juſte, &c. ſuper quo nobis ſupplicavit ſibi per nos remedium adhiberi; Nos nolentes præfat.* R. *in hac parte injuriari, vobis mandamus, quod ſi vobis modo legitimo conſtare poterit meſ. & terras præd. prædictis* I. *&* C. *in forma præd. data & conceſſ. fuiſſe, ipſumque* R. *aliqua alia terras & tenementa quæ fuerunt præd.* I. *præter eadem meſ. & terram, quæ ad manus ſuas virtute finis devenerunt, non tener. ac dictum hæredem ſeu tenent. præd. ſufficient. habere, unde dicta debita levari poſſint, ſicut præd. eſt tunc præd.* R. *de præd. centum libris erga nos exonerari, & quietum eſſe faciat, illos qui inde de jure onerari debent, prout juſtum fuerit, onerantes. Teſte, &c.*

And by that Writ it appeareth, that if the heir or the other Ter-tenants were not ſufficient for to pay the debt, the lands which the heir hath in tail ſhall be charged; for ſome ſay that the King is not bound by the Statute of *Donis*, &c. but that he is in the ſame caſe he was before; *Quare* thereof.

And

And if a man do alien his lands in fee, and afterwards become indebted to the King, *&c.* If the Alienee be diſtrained for that debt, he ſhall have a ſpecial Writ to the Treaſurer and Barons of the Exchequer, rehearſing the whole matter, commanding them for to ſurceaſe, *&c.*

And ſo if a man be diſtrained for a debt or duty due to the King, as Executor, or as a pledge for him who is the King's debtor, he ſhall have a ſpecial Writ unto the Treaſurer and Barons of the Exchequer, to enquire thereof, and to doe right.

Writ of Formedon in the Remainder.

THE Writ of *Formedon* in the *Remainder* lieth, where a man giveth lands to one in Tail, the Remainder unto another in Tail, and afterwards the firſt Tenant in Tail dieth without iſſue of his body, and a ſtranger doth abate and deforceth him in the remainder; he in the remainder, or his heir, ſhall have that Writ of *Formedon* in remainder.

H And ſo if the firſt Tenant in tail alieneth in fee, and dieth without iſſue of his body begotten, he in the remainder in fee ſhall have a Writ of *Formedon* in the remainder to recover his Eſtate, *&c.*

And if a man giveth lands for term of life, the remainder to another, and the heirs of his body begotten, and the Tenant for life dieth, and a ſtranger abateth and deforceth him in the remainder, that he cannot enter, he in the remainder, or his heir, ſhall have a *Formedon* in remainder to recover his Eſtate, *&c.*

So if a man make a Gift in tail, the remainder in fee to another, and the Tenant in tail alieneth in fee or in tail, or for life, and dieth without iſſue, he in the remainder in fee or his heir ſhall have a Writ of Formedon in remainder to recover that Land.

And it ſeemeth the ſame Law ſhall be, if a man leaſe lands for term of life, the remainder to another in fee, and the Tenant for life doth alien in fee, or in tail, or for life, and dieth, and a ſtranger abateth and deforceth him who ought for to have the remainder: then he in the remainder, or his heir, ſhall have a Formedon in the remainder to recover that land: *Quod vid.* 24 *E.* 3.

K And that appeareth to be but reaſonable, becauſe he hath right for to have the land; and then it is but reaſon that he have an Action for to recover the ſame; And that appeareth by the Statute of *Weſt.* 2. *cap.* 24. which willeth,

[218] *Quod quotieſcunque de cætero evenerit in Cancellar. quod in uno caſu reperit. breve, in conſimili caſu cadente ſub eodem jure, & ſimili remedio indigente; concordent Clerici in Canc. in brevi faciend.* for which it ſeemeth that ſuch Writs are granted.

And alſo upon the Statute of *Donis conditionalibus*, there A is not the Writ of Formedon given by expreſs words, but a Writ of Formedon in the Deſcender; but yet it was never doubted, but that if a man make a Leaſe for Life, the Remainder in tail to another, that he in the remainder in Tail, or his heir ſhould have a Writ of Formedon in the Remainder, after the death of the Tenant for life, if he were deforced of the Land; and that is by Equity of the Statute of *Donis*, as it ſeems; For no Formedon in the Remainder is given by any Statute; and therefore it ſeems it ſhall be taken by Equity of the Statute; yet ſome have doubted thereof; and the form of the Writ for him who claimeth the Remainder in Feeſimple, after the Eſtate tail determined, is ſuch:

Rex Vic', &c. *Præcipe* A. *quod*, &c. *reddat* B. *unum meſuag.* B *xx. acr. terr.* &c. *quæ* C. *dedit* D. *& hared. de corpore ſuo exeuntibus ita quod ſi idem* D. *ſine har. de corpore ſuo exeunt. obiiſſet, prad. meſuag. & xx. acr. terr. cum pertinen. præf.* B. *& hæredibus ſuis remanerent. Et quod poſt mort. pradict.* D. *præfat.* B. *remanere debent per formam donationis pradict. eo quod prad.* D. *obiit ſine hærede de corpore ſuo exeunte, ut dicit, & niſi*, &c. *tunc ſum.*

And for the heir of him upon whom the Remainder was entailed: Thus,

Et quæ poſt mort. prad. D. *&* B. *præf.* I. *filio & hared. prad.* B. *remanere debet per form.* &c. *eo quod prad.* D. *obiit ſine har. de corpore ſuo exeunte, ut dicit, & niſi*, &c.

And if a Leaſe be made for term of life, the Remainder C unto another, and unto the heirs of his body begotten; Now after the death of Tenant for life, if he in the Remainder be deforced of the Land, by abatement of a ſtranger; Then he ſhall have ſuch Writ:

Quod A. *dedit* B. *ad vitam ipſius* B. *ita quod poſt mortem ejuſdem* B. *prad. meſſ. & xx. acr. terr. cum pertin.* D. *& hared. de corpore ſuo exeuntibus remanerent, & quod poſt mortem prad.* B. *&* D. *præf.* W. *filio & hæredi ejuſdem* D. *remanere debent per formam*, &c.

2 & 3 Ma. Dyer 125. 6 E. 3. 5. And if a Reverſion be granted to another in Tail, and D the Tenant for life dieth ſeiſed, and the ſtranger abates and enters the Land; the Grantee in Reverſion ſhall have a Formedon in ſuch form:

Qua

Qua G. *dedit* T. *ad vitam ipſius* T. *& qua idem* G. *poſtmodum conceſſit præfat.* M. *&* P. *quondam viro ſuo habend. poſt mortem præd.* T. *præfat.* P. *&* M. *& hæred. de corp. ipſor.* P. *&* M. *exeuntibus, & qua poſt mortem præd.* T. *præf.* M. *remanere debent per. form. conceſſionis præd. ut dic.* &c.

E And if *A.* give a Manor except 13 *s.* 4 *d.* rent to *R.* and *L* his wife, and to the heirs of their two bodies begotten, and the Remainder to one *I.* in fee, and afterwards *R.* aliens one houſe and one acre of Land to one man, and three acres to another, and two acres of Land to a third perſon, and the reſidue of the Manor unto one *B.* in Fee, except the rent of 13 *s.* 4 *d.* and afterwards the husband and wife die without iſſue betwixt them; he in the remainder ſhall have ſuch Writ againſt the Alienee.

Pracipe D. *quod*, &c. *reddat* I. *manerium de* F. *cum pertin. exceptis uno meſſ. ſex acr. terr. & treſdecim. ſolidat. & quatuor denar. redditus in eodem manerio. Et pracipe* G. *quod*, &c. *reddat eidem* I. *unum meſuag. & xx. acr. terr. cum pertin. in* F. *Et pracipe* T. *quod*, &c. *reddat eidem* I. *tres acr. terr.* &c. *Et pracipe* L. *quod*, &c. *reddat eidem* I. *duas acr. terr. cum pertin. quod* A. *dedit* R. *& I. uxori ejus, & hæred. de corporibus ipſorum* R. *& I. exeunt. ita quod ſi iidem* R. *& I. ſine hær. de corpor.* &c. *obierint, prædict. meſſ. ſex acras terr. & maner. except. meſ. ſex acr. terr. & reddit. præd. præf.* L. *& hæredibus ſuis remanerent*, &c.

And by that it appeareth, That a man ſhall have a Writ of Formedon in Remainder againſt ſeveral Tenants by divers A *Pracipes* in one Writ.

And if a man leaſe Lands for life, the remainder in tail, *&c.* the remainder over in fee to another, and the Tenant for life dieth, and the Tenant in tail alieneth in fee, and afterwards the Alienee doth alien two parts of the land to one Tenant, and a third part of the Land to another Tenant, and then the Tenant for life dieth, and then the Tenant in tail dieth without iſſue; He in the remainder in fee ſhall have a Formedon in the remainder, in ſuch form:

Pracipe A. *quod*, &c. *redd.* B. *duas partes unius meſ. cum pertin. in* N. *Prac.* F. *quod*, &c. *reddat eidem* B. *tertiam partem unius meſ. cum pertin. in eadem villa, quas* D. *dedit* C. *ad vitam ipſius* C. *ita quod poſt mortem ipſius* C. *præd. duæ partes & tertia pars* F. *& hæred. de corpore ſuo exeunt. remanerent & ſi præd.* B. *ſine hær. de corpore ſuo exeunte obierit, præd. duæ partes & tertia pars præf.* B. *hær. ſuis remanerent, & qua poſt mort. pd.* C. *&* F, *præf.* B. *remanere debent per form. donationis pd. eo quod. pd.* F. *obiit ſine hæred. de corpore exeunt. ut dicit, & niſi*, &c.

And by that appeareth how that he ſhall have one Writ by ſeveral *Præcipes* againſt ſeveral Tenants.

[219] If a man leaſe to one twenty acres of lands for life, and F dieth, and the reverſion deſcendeth to his brother, and he dieth, and the reverſion deſcendeth to his two ſiſters, and they do make partition of the lands, and ten acres are aſſigned to one ſiſter to have to her and her heirs, and the other ten acres are allotted to the other ſiſter and her heirs; and one of the Coparcenors grants the reverſion of her part and ten acres to a man and his wife, and the heirs of their two bodies begotten, and afterwards the Tenant for life dieth, and a ſtranger doth enter and abate in the land; the husband and the wife who are in the remainder ſhall have a Writ of Formedon in the remainder in this form: E

Præc. R. *de* N. *quod reddat* K. *&* A. *uxori ejus decem acr. terr. cum pertinenciis in* N. *quas una cum aliis decem acr. terr. cum pertinenciis in eadem villa* R. *de* S. *dedit* W. *ad totam vitam ſuam, & quas* M. *de* B. *ſoror & una hæred.* N. *de* S. *fratri & hær. præd.* R. *de* S. *cui quidem* N. *reverſio præd. decem acr. terr. aſſignata fuit in purparteam ſuam, ipſam de præditis viginti acris terr. per partic. inter ipſam & Lucian ſoror. & alteram hæred. præditt.* N. *de* S. *inde factam poſt mort. præd.* W. *contingent. conceſſit præfat.* R. *& hær. de corporibus ipſorum* R. *&* A. *exeunt. poſt mort. ejuſd.* W. *habend. & quæ poſt mortem ejuſd.* W. *præf.* R. *&* A. *remanſiſſ. habent per formam conceſſionis præditt. ut dicunt, & niſi fecerint, &c. præditt. &c.*

And if he who hath the remainder, or his heir be once A ſeiſed of the lands by force of the remainder, then he ſhall never have a Formedon in remainder for that land, but a Formedon in deſcender, becauſe the remainder is once executed. And no Tenant ſhall have a Formedon in deſcender, nor in remainder, where he is once in poſſeſſion by force of the entail, or by force of the remainder; for after that he F hath poſſeſſion of the Land by force of the tail, or by force of the remainder, if he put out, he ſhall have an Aſſiſe of *Novel Diſſeiſin*, or the Writ of *Quibus*, in the nature of an Aſſiſe, *&c.*

If a Remainder be given to two or three heirs, and one B dieth, and the other ſurviveth and afterwards dieth, his heirs ſhall have a Formedon in the remainder, as heir to him, without mentioning in the Writ that he ſurvived the other Joint-tenant, *&c.*

And in a Formedon in the remainder, he ought for to C ſhew the Deed thereof, if the Demandant do require Oyer

of

of the Deed, but in the Count he ſhall not ſpeak of any Deed; but the Tenant ought for to demand Oyer thereof, and then the Demandant ſhall ſhew the ſame, and in the Count ſhall not mention the Deed.

D And if the Remainder be once executed in the Writ of Formedon in the Deſcender, he ſhall never mention that Remainder, but the general Writ of Formedon ſhall ſerve in that caſe, as appeareth by the Rule in the Regiſter.

Writ of Formedon in Reverter.

E THE Writ of Formedon in the reverter lieth where one giveth lands to a man in tail, or in frankmarriage with his daughter, and afterwards the Donee or his heirs dieth without iſſue of his body; then the Donor or his heirs may bring a Writ of Formedon in the reverter againſt him who is Tenant of the lands ſo given.

And ſo if one man giveth lands unto another in tail, and the Donor granteth the Reverſion in fee unto another, and then the Donee in tail dieth without heir of his body, the Grantee of the Reverſion ſhall have a Writ of Formedon in the reverter to recover that land: but if he grant the reverſion unto another in tail, and then the Donee dieth without heir of his body, then that Grantee of the reverſion ſhall have a ſpecial Writ, as appeareth before, amongſt the Writs of Formedon in the remainder, and for the heir of the Donor, the form of the Writ is ſuch: See before 218 D. 2 E. 3. Ma. Dy. 225. 2 E. 3. 5.

Præcipe A. &c. quod redd. unum meſ. & viginti acr. terr. cum pertin. in G. quod C. pater præd. B. cujus hæres ipſe eſt, dedit I. & E. uxori ejus & hær. de cor. corporibus exeunt. & quod poſt mort. præd. I. & E. ad præſ. B. reverti debet per form. donationis præd. I. & E. obierunt ſine hær. de corporibus ſuis exeunt. ut dicit, & niſi, &c. *Vide* 4 El. 2. Dy. 216. A. 22 H. 6. 36.

F And if lands be given in tail, the remainder to another in tail, and afterwards the firſt Tenant in tail dieth without iſſue, and the ſecond Tenant in tail in the remainder doth enter into Religion, and is profeſſed; the Donor or his heirs ſhall have ſuch a Writ of Formedon in the reverter:

Quod C. pat. D. cujus hær. ipſe eſt, dedit F. & hæredibus de corpore ſuo exeunt. ita quod ſi idem F. ſine hæred. de corpor. ſuo exeunt. obierit, prædict. meſ. &c. *H. & hæred. de corpore ſuo exeunt. remaner. & quod poſt mortem præd. F. & poſtquam præd. H. habit. religion. aſſumpſit ad præſ. D. reverti debet per form. donation. præd. eo quod præd. F. obiit ſine hær. de corpore ſuo exeunte,* &c. *& niſi,* &c.

And if *C.* give lands in tail to *E.* and to *F.* his wife, and G
unto the heirs of their two bodies begotten, and the ſaid *C.*
hath iſſue *G.* and *B.* and dieth, and afterwards *G.* dieth, and
B. granteth the reverſion to *H.* for life, and afterwards *E.*
dieth and *F.* dieth without iſſue of their bodies, *&c. B.* ſhall
have a Formedon in the reverter in this form:

Quod C. *dedit* E. *&* F. *uxori ejus, & hæred. de corporibus,* &c.
exeuntibus, & quod G. *filius & hæres prædict.* C. *frat. prad.* B.
cujus hæres ipſe eſt, poſt mortem prad. E. *conceſſit* H. *ad totam*
[220] *vitam ſuam poſt mortem prad.* F. *habend. & quod poſt mortem*
prædictor. F. *&* H. *ad præfat.* B. *reverti debet per formam do-*
nationis & conceſſ. prad. eo quod prædict. E. *&* F. *obier. ſine hæ-*
red. de corporibus ſuis exeuntibus, &c.

And it ſeemeth in that caſe, that if *H.* had ſurvived *F.*
and had entred into the land, and had been ſeiſed of the
Land for term of his life, and then had died, that then the
ſaid *B.* ſhall not have a Formedon in the reverter, but a Writ
of Entrie *ad terminum qui præteriit.* But if *H.* have not entred
into the land after the death of *F.* then the ſaid *B.* ſhall have
the Writ of Formedon in the reverter. But if *H.* have entred
into the Land after the death of *F.* and had aliened the
Land in fee, then *B.* ought to have had a Writ of Entrie *in*
conſimili caſu during the life of *H.* and after the death of *H.*
a Writ of Entrie *ad communem legem.*

And if *F.* leaſe Lands unto *P.* for term of life, and hath A
iſſue a ſon and a daughter, and dieth, and the ſon granteth
the reverſion to *I.* and to the heirs of his body begotten, and
afterwards the Tenant for term of life dieth, and the Tenant
in tail dieth without iſſue, *&c.* and then the ſon who was do-
nor dieth, the daughter ſhall have a Formedon in the reverter
in this form:

Quod F. *dedit* P. *ad totam vitam ſuam, & quod* T. *filius &*
hær. prad. F. *frater prad.* B. *cujus hær. ipſe eſt, conceſſit* I. *habend.*
& poſt mortem ipſius P. *eidem* I. *& hæred. de corpore ſuo exeunt.*
& quod poſt mortem prædict. P. *&* I. *præfat.* B. *reverti debet*
per form. donation. & conceſſionis prædict. & quod præfat. I. *obi-*
it ſine hær. de corpore ſuo exeunte, ut dicit, &c.

And if Lands be given in tail, and the Tenant in tail hath B
iſſue two daughters, and afterwards one of the daughters
hath iſſue a daughter *B.* and the other daughter hath iſſue
another daughter *C.* and afterwards *B.* hath iſſue *I.* and
then all the daughters die, and then the ſaid *I.* dieth with-
out iſſue of his body, the donor or his heir ſhall have ſuch
Writ.

Et qui post mort. prædict. E. *&* F. *&* M. *&* A. *filiar. & hær. eorund.* E. *&* F. *&* I. *fil. prad.* M. *&* *hær. eorundem* M. *&* A. *ad præf.* I. *de* B. *reverti debent*, &c. *eo quod prædict.* I. *&c. fil. prædict.* M. *obiit sine hæred. de corpore suo exeunt.*

C In a Formedon in the Reverſion in his Count he ought to lay the Eſplees in the Donor, and in the Donee.

D In a Formedon in the reverter he ought to mention the eldeſt brother who ſurvived his father, *&c.* becauſe he held the eſtate, although that he was not ſeiſed of the land; as if the Donor hath iſſue two daughters and dieth, and the eldeſt Son dieth before he entreth into the land. In a Formedon in the Reverter brought by the youngeſt Son, he ought to mention the eldeſt Son, who was his brother, becauſe he was once heir to the donee; but if the eldeſt die in the life-time of the father, then the youngeſt Son in the writ brought by him ſhall not mention him, as heir to the father, becauſe he was never heir *in facto* to the father, but in a writ of right, which is called *Præcipe in capite*, brought by the youngeſt Son, as heir to his father, although the eldeſt ſon be dead in the life of the father, yet in his count he ought to make mention of the eldeſt ſon, becauſe by poſſibility he might have held the Eſtate, and have been heir to his Father.

E And if a man give lands in tail, and the tenant in tail hath iſſue and dieth, and the iſſue dieth without heir of his body before he entreth into the land, the Donor may bring a Formedon in the Reverter, ſuppoſing that the Donee died without iſſue, *&c.* and that writ was awarded good, *M.* 18 *E.* 2. becauſe the iſſue was not living at the time of the purchaſe of the writ, and he cannot have a Formedon in the Reverter of the ſeiſin of the iſſue, becauſe the iſſue died before he had any ſeiſin of the Land.

Writ of Ejectione Firmæ.

F THE Writ of *Ejectione firmæ* lieth, where a man doth leaſe Lands for years, *&c.* and afterwards the Leſſor doth eject him, or a ſtranger doth eject him of his term, the leſſor ſhall have a writ of *Ejectione firmæ*; and the form of the writ is ſuch: *Vide* 1 & 2 M. Dy. 117. *Ibgraves* Caſe.

G *Rex Vic.* &c. *Si* A. *fecerit*, &c. *tunc pone*, &c. B. *quod ſit coram Juſtic. noſtris*, &c. *oſtenſurus quare vi & armis manerium de* L. *quod præf.* T. A. *dimiſit ad termin. qui nond. præteriit, intravit, & bona & catall. ejuſdem* A. *ad valent.* &c.

in

in eod. manerio inventa cepit & asportavit, & ipsum A. à fini-fua prædict. ejecit, & alia enormia ei intulit ad grave dam-num, &c.

And there is another form of writ thus:

Ostens. quare vi & armis manerium de B. *quod* I. *pref.* A. *dimisit ad termin. 7. annor. infra termin. illud intravit, & illud per magnum tempus occupavit, & ipsum* A. *quominus exitus ma-nerii prad. juxta form. dimis. prad. percipere potuit, impedivit & bona,* &c.

6 R. 2. Fitz. Ejectione firm. a cont.

And in that writ he shall recover his term again, if the term be not ended, and the process is Attachment and Distress, and process of Utlagary. And *Anno* 14 *H.*7. in *Ejectione firmæ* brought against a stranger, the Plaintiff had Judgment for to recover his term, and thereupon the Defendant brought a writ of Error, and the Judgment was affirmed, and execution awarded for the Plaintiff.

And 17 *H.*8. such Judgment was given in the Common Pleas, that he should recover his term and his damages.

If a man lease Lands for years, and afterwards suffer a feigned Recovery against him by a writ of Entrie in the Post, or other writ, if he who recovereth entreth, the termor shall have an *Ejectione firmæ* against him by force of the Statute of 21 *H.*8. *cap.* 15. because the Statute gives him power to retain, hold, and enjoy his term. And by this it appeareth, that he who recovereth doth wrong unto him, if he ouſt him of his term; but before the said Statute, the Lessee could not have such writ: because he who recovered came in by course of Law.

[221]

And if a man lease Lands for years, and afterwards grant-eth the reversion in Fee, and the Lessee attorneth, now the Grantee of the reversion do put out the Termor, he shall have an *Ejectione firmæ* against him. And so if the re-version do Escheat, and the Lord by escheat eject the Ter-mor, he shall have an *Ejectione firmæ* against him.

And so if he in the reversion be a villain, and the Lord claim the reversion, and afterwards eject the Termor, he shall have an *Ejectione firmæ* against him.

Writ of Aiel or Beſaiel.

THE Writ of *Aiel* or *Beſaiel* lieth, where the Grandfather or great Grandfather was ſeiſed in his demeſn as of fee of any Lands or Tenements of Feeſimple the day of his death, and dieth, and a ſtranger doth abate or entreth the ſame day upon him, and deforceth the heir, the heir ſhall have that writ of *Aiel* or *Beſaiel*, as the caſe is, and it behoveth not that the Grandfather die ſeiſed; or if he be ſeiſed the day that he died, it ſufficeth to maintain this action; and the form of the writ is ſuch:

Note that in this writ, a man cannot make title higher than his Beſaiel; or the brother of his Beſaiel, 3 E. Anceſtor did the day in

Rex Vic. &c. Præcipe A. quod juſte, &c. reddat B. unum meſuag. cum pertin. in E. de quo W. avus prad. B. avita prad. B. vel proavus, vel proavia prad. B. cujus hæres ipſe eſt, fuit ſeiſit. in Dominico ſuo, ut de feodo die quo obiit, ut dic. & niſi fecerit, &c. pradict. B. fecerit ſecur. &c. tunc ſum. pradict. A. &c.

To Aiel the defendant ſaid, that the Aiel had iſſue W. eldeſt ſon, who ſurvived the

Aiel, and committed Felony, and was abjured, and afterwards taken and on that

pleaded a Felon; and good Plea. 16 E. 3. Fitz. Aiel.

And the proceſs in that writ is Summons and Grand Cape before appearance; and after appearance, if the Tenant make default, a Petit Cape ſhall be awarded.

And although that the Anceſtor go in pilgrimage beyond the Sea, and there dieth, yet the writ of Aiel ſhall be general, as is aforeſaid. 13 E. 3. Aiel 2.

And ſo if the Grandfather enter into Religion, and is profeſſed, the heir ſhall have a writ of Aiel, if the ſtranger do abate, and the writ ſhall be general, and ſhall not ſpeak of his entry into Religion or of his poſſeſſion, &c. 22 E. 3. 10. Br. Coſinage.

And the Aunt and the Neece ſhall joyn in a Writ of Aiel of the ſeiſin of their Grandfather, by equity of the Statute. And the Statute ſhall ſerve for thoſe dying ſeiſed before the Statute, as for thoſe dying ſeiſed ſince the Statute. 6 In Beſaiel, the releaſe of the Aiel warranty is good plea.

And two Coparcenors brought a writ of Aiel, and by their Count they did ſuppoſe the Anceſtor to be great Grandfather to the one, and Treſaiel to the other, and yet it was adjudged good. And the writ in the Regiſter is ſuch: 12 E. 3. Joynder in action.

Rex

Rex Vic. &c. Præc. A. quod juste, &c. redd. B. & C. unum molendinum, &c. de quo D. avus prædict. B. & proavus præd. B. cujus hæred. ipsi sunt, fuit seisitus, &c.

Writ of Cosinage.

THE Writ of Cosinage lieth, where the Tresaiel was seised in his demesn as of fee the day he died of any land or Tenements, and dieth, and a stranger doth enter and abate, then his heir shall have his writ of Cosinage. And the form of the writ is such:

Rex Vic. &c. Præc. A. quod juste, &c. redd. B. annum red. cum pertin. in N. de quo W. consanguineus vel consanguinea præd. B. cujus hæres ipse est, fuit seisitus in dominico suo ut de feod. die quo obiit, ut dicit, & nisi, &c.

And a man shall have a writ of Cosinage of the seisin of the brother of the Tresaiel.

22 E. 3. Brief 308 It is admitted that Tresaiel is cousin.

And the heir of the Lord who was his Tresaiel may have a writ of Cosinage of the rent of the Seigniory against the Tenant, if he deforce him of the rent, and may count of the seisin of his Tresaiel; or if he will, he may have a writ of customes and services against the Tenant at his election.

46 E. 3. 15. 12 H. 7. 4. 4 E. 3. Aiel 4.

And if a man may have a writ of Aiel, he shall not bring a writ of Cosinage, and if he do, the Tenant may abate the writ by pleading the seisin of the great Grandfather; and also a man shall not have a writ of Cosinage of the seisin of his great Grandfather, but shall be put to his writ of Besaiel, *&c.*

Nor a man shall not have a writ of Cosinage of the death of his uncle, because he may have an assise of Mortdauncestor of his seisin.

44 E. 3. 13.

And Cosinage doth not lie between privies in bloud, no more than an assise of Mortdauncestor, but shall be put to their *Nuper obiit.*

14 E. 3. Cosinage 6.

And if a Tresaiel goeth beyond sea and entreth into religion, and be professed; yet the writ of Cosinage shall be general as the writ of Aiel shall be. And the Process is Summons, Grand Cape, and Petit Cape.

Writ of Ad quod Damnum.

THE Writ of *Ad quod Damnum* lieth, where a man will give Lands or Tenements in Mortmain, as to a Religious house, or to a body politick in Fee-simple, then he ought for to have the Kings Licence, and the Licence of the chief Lords to make such gift or grant, and before such Licence be granted, the course is to sue unto the King to have a Licence to sue that writ out of the Chancery, directed unto the Escheator, to enquire what damage it would be to the King, or unto other persons, if the King do grant such Licence: and upon the Return of that writ certified in the Chancery, the King ought to give leave, that he may alien or give in Mortmain; and that inquisition ought to be certified into the Chancery under the seals of the Escheator and of the Jurors by whom the Inquisition was found. And the form of the writ is such:

A *Rex dilecto sibi* I. *de* K. *Escheatori suo in com.* L. *salutem. Præcipimus tibi, quod per sacramentum proborum & legalium hominum de Ballivâ tuâ vel de comitat. tuo, per quos rei veritas melius sciri poterit, diligenter inquiras, si sit ad damnum vel ad prejudicium nostrum vel aliorum, si concedamus* B. *quod ipse unum messuagium, duas acras terræ, & unam acr. prati cum pertin. in* W. *dare possit & assignare cuid. Capellano divina pro anima ipsius* B. *& animab. patris & matris, ac anteces. suorum, & omnium fidelium defunctorum in Capella Beatæ* Mariæ *de* W. *vel in Ecclesia Parochiali beatæ* Mariæ *de* S. *singulis diebus celebraturo Habend. & tenend. eidem Capellano & successoribus suis Capellanis divina in Eccles. prædict. vel in ead. Capella pro animabus præd. singulis diebus, prout prædictum est, celebraturo in perpetuum, necne, & si sit ad damnum vel prejudicium nostrum, aut aliorum, tunc ad quod damnum & quod prejudicium nostrum, & ad quod damnum & quod prejudicium aliorum. Et quorum, & qualiter, & quomodo, & de quo, vel de quibus præd. mes. terra & pratum tenean. & per quod servitium, & qualiter & quomodo, & quantum valent per annum in omnibus exitibus, juxta verum valorem eorundem, & qui & quot sunt medii inter nos & præf.* B. *de Mes. terra & prato prædict. & quæ terra & quæ tenementa eidem* B. *ultra donationem & assignationem præd. remaneant, & ubi, & de quo, vel de quibus, teneatur, & per quod servitium, & qualiter & quomodo, & quantum valeant per annum in omnibus exitib. & si terra & tenementa eidem* B. *remaneant ultra donationem & assignationem præd. sufficient. ad consuetud. & servitia tam de præd. mesnag.*

meſuag. terra, & prato ſic datis; quam de aliis terris & tenem. ſibi retentis, debita faciend. & omnia alia & ſingula onera quæ ſuſtinuit, & ſuſtinere conſuevit, ut in ſectis, viſibus franci plegii auxiliis, tallagiis, vigiliis, ſhiris, redemptionibus, amerciamentis, contributionibus, & aliis quibuſcunque oneribus emergentibus ſuſtinend. Et quod idem B. *in aſſiſis, juratis, & aliis recognitionibus quibuſcunque poni poſſit, prout ante donationem & aſſignationem prædict. poni poſſit, ita quod patria per donationem & aſſignationem præd. in ipſius* B. *defectu, magis ſolito non oneretur ſeu graveretur, & inquiſitionem inde diſtincte & aperte fallam nobis in Cancell. noſtra ſub ſigillo tuo & ſigillis eorum, per quos fuerit ſine dilatione mittatis, & hoc breve, Teſte, &c.*

Or thus: *Quod hæredes ipſius* B. *in aſſ. juratis. & aliis recognitionibus quibuſcunque poni poſſint, prout anteceſſores ſui ante donationem & aſſignationem præd. poni conſuever. ita quod patria, &c.*

By which it appeareth, that it is damage to the Country, that a Freeholder who hath ſufficient Lands to paſs upon aſſiſes and Juries, ſhould alien his lands in mortmain, by which alienation his heirs ſhould not have ſufficient Land after the death of the father, to be ſworn in Aſſiſes and Juries.

And by the Rule of the Regiſter, If a Chaplain or a woman will give their Lands or Tenements in mortmain; yet in the writ of *Ad quod dammum*, ſhall be that clauſe, *Et quod iidem, &c. in aſſiſis, juratis, & aliis recognition. quibuſcunque poni poſſint*; By which it appeareth, they ought to have ſufficient Lands, beſides the Lands to deſcend to their heirs.

And if a Chaplain and a Layman will alien in a Mortmain jointly by Licence, then the writ of *Ad quod damnum* ſhall be in this form:

Et quod idem A. *&* B. *& hæred. prædict.* B. *Capellani, in aſſiſis, juratis, &c. poni poſſint, prout idem* A. *& anteceſſor ipſius* B. *Capellani ante donationem, &c. poni conſuever. ita qd. patria, &c. in ipſius* A. *& hæred. prædict.* B. *defect. magis ſolito non oneretur, &c*

And if one Abbat will give Lands or Tenements in Mortmain, to another Abbat or Prior, or body corporate, yet he ought to have the King's Licence ſo to do, becauſe of the words of the Statute of Mortmain. *Ita quod terr. & tenementa ad manum mortuam non deveniant quoquo modo.* And there he ought for to ſue a writ of *Ad quod damnum* to enquire as aforeſaid. But in the writ ſhall be this Clauſe, *Et quod idem Abbas, &c. in aſſ. & jurat. &c.* nor that Clauſe, *Et*

quod

quod patria, &c. ſhall not be put in that writ of *Ad quod damnum*. But now the Common experience is, that they will not ſue the writ of *Ad quod damnum* when they purchaſe leave to alien in mortmain, but the uſe is, to have theſe words in the end of the King's Patent of Licence; *Et hoc, abſque aliquo brevi de Ad quod damnum, ſeu aliquibus aliis brevibus, inquiſitionibus, aut mandatis noſtris ſuperinde habend. & proſequend.* But it ſeemeth thoſe Patents are dubious, whether they be good or no; if it be evidently proved, that ſuch patents are unto the damage of others who are the King's Tenants, and by which the King's Tenants ought to have wardſhips or eſcheats, *&c.* and by which the King loſeth the wardſhip of his Tenants, or that the King loſeth any advantage which he might have, if ſuch patents were not granted. And therefore I conceive, that the beſt courſe is, to ſue forth ſuch writs of *Ad quod damnum*, to enquire to what damage ſuch Licences in mortmain ſhall be to the King or others, ſo that the King be not deceived in his grant. And ſee a good cauſe for the ſame in the title *Grants* in the abridgment, *H.* 16. *E.* 3.

And there is another writ of *Ad quod damnum*, if it be to the damage, *&c.* If the King grant to *B.* that he may give five houſes, *&c.* to *C.* guardian of the Chapel of our Lady S. *Mary*, and to his Succeſſors Guardians and Chaplains of the foreſaid Chapel, for the maintainance of the ſaid Guardian, and two Chaplains to do divine ſervice in the ſajd Chapel and in the Church of *P.* &c. in the honour, *&c.* and for the ſouls, *&c.*

And if the King will give licence to one to grant a rent unto an Abbat and his Succeſſors, yet he ought for to ſue forth a writ of *Ad quod damnum*, if he have not theſe words in the patent; and this without any writ of *Ad quod damnum*, &c. And the form of the writ is ſuch:

Si concedamus eid. A. quod ipſe cent. marc. redditus cum pertin. in N. dare poſſit, & aſſignare dilectis nobis in Chriſto Abbati & Conventui de N. ac Priori & Monachis in Prioratu S. Jacobi Briſtoll. quæ eſt cella ejuſd. Abbatis commorantibus, ad inveniend. duos Capellanos, &c. in Eccleſ. prioratus prad. tenend. eiſdem Abbati & Conventui ac Prioratui & Monachis in dicto Prioratu commorantib. & ſucceſſorib. ſuis, ad inveniend. duos Capellanos, &c. in Eccl. Prioratus prædicti, ut prad. eſt, ſingulis diebus celebratur. in perpetuum necne. Et ſi ſit ad dampnum, &c. ad quod damnum, &c. & de quo, vel de quibus prad. redditus teneatur, & per quod ſervic. & qualiter, & quomodo, & qui, & quot ſunt medii, ut in primo brevi.

And

And it is not said in the writ, what the value is yearly, because rent ought not to be extended.

And if a man sue to the King for a Licence to give an Advowson to two Chaplains, and to their successors to hold to their proper use, and that they may hold the same to them and their successors, appropriate for ever to say divine service, &c. he shall have a writ of *Ad quod damnum*, to enquire, what damage such grant would be to the King or others, and that writ appeareth in the Register. And the writ of *Ad quod damnum* the substance of the Licence, to alien in mortmain, ought to be expressed.

And if a man will exchange Lands, Tenements, or Rents with another Abbat, or Body corporate, upon the Licence granted, he ought to sue forth a writ of *Ad quod damnum*; and in the writ both the Lands which are given, and the Lands which are taken in exchange, ought to be mentioned, and to enquire of them as afore is said.

There is another manner of form of *Ad quod damnum* where the King granteth a Licence unto an Abbat or a Prior to purchase twenty pound land, and afterwards one man will give Lands to the said Abbat of the value of five pounds, another will give him lands of the value of forty shillings, and another man lands of the value of 20 s. The form of the writ of *Ad quod damnum* shall be such:

Rex Escheatori, &c. Præcipimus tibi, &c. si sit ad damnum, &c. si concedamus A. *quod ipse unum messuagium, & centum acras ter. in* N. B. *de* C. *quod ipse unum messuagium, & 40 acras terræ cum pertin. in eadem villa* E. *de* F. *quod ipse 30 acras terræ in eadem villa dare possit, & assignare dilectis nobis in Christo, &c. habend. sibi & successoribus suis in partem satisfactionis 20 l.* 2 H. 7 6. *terrarum & reddituum per annum, quas Dominus Edwardus nuper Rex Angliæ avus noster per literas suas patentes eisdem Abbati & Conventui, tam de feodo suo proprio quam aliene, receptis terris & tenementis quæ de ipso avo nostro tenebantur in capite concessit acquirend. & etiam* I. *de* N. *quod ipse unum messuagium cum pertinent. in eadem villa dare possit & assignare eisdem Abbati & Conventui, habend. & tenend. sibi & successoribus suis in perpetuum in excambium, pro uno messuagio in eadem villa eidem* I. *de* N. *per prad. Abbatem & Conventum dandi & concedend. habend. & tenend. eidem* I. *de* N. *& hæredibus suis in excambium præd sicut prædictum est in perpetuum necne, & si sit, &c. ut supra.*

Vide 16 E. 1. Plow. Com. 457. D. And by that writ it appeareth, that he may have one writ for divers Purchases to be made. And also that a Licence made unto an Abbat, in the time of one King

good to purchase Land by in the time of another King.

B There is another Writ of *Ad quod damnum* where the King granteth to an Abbat, or to a Bishop, Licence for to purchase an Advowson, and to appropriate the same to him and his Successors for ever.

And another Writ where the King granteth unto an Abbat or a Bishop licence for to appropriate an Advowson whereof they are seised in fee in their own right.

By which it appeareth, that a Bishop or an Abbat could not have appropriated an Advowson whereof they were seised in fee in their own rights, without the King's licence; and if they did, it was forfeited for mortmain.

I And if an Abbat holdeth of another man by a certain Rent-service, the Lord cannot release unto the Abbat that Rent without the King's licence; and if he doe, it is mortmain, and the King shall have the Rent; and therefore is the Writ of *Ad quod damnum* ordained, that where the Lord hath licence to release unto the Abbat that Rent, to enquire to whose damage the same shall be, *&c.* as it shall be of Lands, *&c.*

38 Ass. 5t. Br. Mortm. 20. It is no Mortmain. 21 E. 3. 18. Br. Mortm. 16. and 31. It is no Mortmain; because the Rent is extinct.

A There is another form of *Ad quod damnum*, where the King giveth a Licence to alien Lands and an Advowson which are holden of him in *Capite*, unto an Abbat, and that he do

B appropriate them. And another form of Writ where the King granteth Licence to one, to alien certain Lands, and a reversion of other Lands to a Chaplain in mortmain.

And if the Villain of an Abbat or Prior do purchase Lands or Tenements in fee, the Abbat or Prior cannot enter into them without the King's Licence; and if he do, it is mortmain. And it seemeth that the Law is such, because there is a Writ of *Ad quod damnum* in the Register, to enquire to whose damage the same is; and if the King granted such Licence unto an Abbat or Prior, that they may enter into such Lands or Tenements which their Villains have purchased.

C And see the Stat. *De Religiosis*, how that case shall be taken to be within the words of the Statute, or by equity of the Stat.

And it appeareth by the several forms of Writs of *Ad quod damnum* which are in the Register, that the Writ ought to be made according to the Letters Patents of Licence, because he ought to rehearse the effect of the Letters Patents therein; and therefore the forms of the Writs of *Ad quod*

D *damnum* do vary as the Letters Patents themselves do vary. And it appeareth by the Register, That if a man do purchase Letters patents of Licence to give Lands unto an Abbat in exchange for a Rent, which the Abbat releaseth to him, *&c.* that he shall have a Writ of *Ad quod damnum* thereupon.

And if a man do purchase a Licence to found a house with E
Lands, or to make a Prebendary, and to give Lands to the
same, &c. that he ought to have a Writ of *Ad quod dam-*
num, &c. upon the same.

And if a man doth devise Lands or Rents to his Executors F
and to their Heirs, to dispose according to his will, and af-
terwards he maketh his will, that they give the same in
Mortmain; they ought to have the King's Licence to make
the Grant, and a Writ of *Ad quod dampnum* upon the same,
as appeareth by the Register.

If an Abbat, or a Dean and Chapter, have a Rent in Fee G
issuing out of Lands, and the Tenant of the Land will grant
by his Deed, that they and their Successors shall distrain for
that Rent in other Lands, it appeareth by the Register, that
9 H. 6. 9. he ought to have the King's Licence to make such Grant. And
a Writ of *Ad quod dampnum* shall be to enquire what damage
or prejudice the same shall be to the King or others, &c.
and, yet it is hard to prove, how that shall be taken to be
within the words of the Statute of Mortmain, because such
41 E. 3. 15. Grant is a good Grant of a Rent in Fee, although that there
9 H. 6. 9. were not such Rent before to the Abbey, or Dean and Chap-
1 Ass. 10. ter. It seemeth that the Grant made without Licence, shall
Br. Ass. 205. be as a new Grant in Law.

There is another manner of Writ of *Ad quod dampnum*, and H
that is, where the King's Tenant will alien his Lands which
he holdeth of the King to another in fee, or in tail, or for
life, then by the Course of Law he ought to have the King's
Licence by his Letters patents so to doe, and before the A-
lienation be made, the King ought to be certified by a Writ
of *Ad quod dampnum*, what damage or prejudice that Aliena-
tion shall work to the King: but at this day that Writ is
not used to be granted, but onely the Licence to alien with-
out regard to any Writ of *Ad quod dampnum* to enquire thereof.
But yet such Licence must not be allowed of by the Justices
when the same is shewed, without bringing a Writ out of
the Chancery unto the Justices, which is called *Quod permit-*
tat, &c. for which see *M.* 32 *H.* 6. in title *Fines*. And the
form of the Writ of *Ad quod dampnum* is such:

Rex Escheatori, &c. Præcipimus, &c. inquisit. si sit ad
dampnum vel præjudicium, &c. Si concedamus I. quod ipse
de manerio suo de N. cum pertin. quod de nobis tenetur in
capite, ut dicitur, feoffare possit R. habendum & tenendum sibi
& hæredibus suis de nobis & hæredibus nostris, per servitia
inde debita & consueta in perpetuum, nesne. Et si sit ad dam-
num vel præjudicium nostrum vel aliorum, &c. Et quod præ-

fallchon aliorum, & quorum, & qualiter, & quomodo. Et ſi manerium praditt. teneatur de nobis in Capite, ut pradittum eſt, ut de alio. Et ſi de nobis, tunc per quod ſervitium, & qualiter, & quomodo, & quantum praditt. manerium valeat per annum in omnibus exitibus juxta verum valorem ejuſdem. Et ſi qua terra & tenementa remaneant eidem I. ultra manerium praditt. tunc qua terra & tenementa, & ubi, & de quo, vel de quibus tenentur, utrum videlicet de nobis, an de alio, & ſi de nobis, tunc per quod ſervitium, & qualiter, & quomodo. Et ſi de aliis, tunc de quo, vel de quibus, & per quod ſervitium, & qualiter, & quomodo, & quantum valeant per annum in omnibus exitibus. Et inquiſitionem inde diſtincte & aperte, &c.

And if the King will grant a Licence unto his Tenant who holdeth of him in *Capite*, to alien unto another in fee, and to take back an Eſtate unto him and his wife, and unto the heirs of their two bodies begotten, from the ſame Alienee; and for default of ſuch iſſue, the remainder unto another in fee tail; and for default of ſuch iſſue, the remainder to the right heirs of the firſt Donee, he in that caſe ſhall have a Writ of *Ad quod damnum*, &c. to enquire, *&c.* and yet ſuch Writs are not uſed to be granted upon ſuch Licence.

There is another Writ in the Regiſter, that if the King's Tenant doth alien his Lands, of which a woman holdeth part in Dower for term of her life, and another holdeth other parcel thereof for term of her life, and he himſelf holdeth the reſidue in fee. Now he ſhall have a Writ of *Ad quod damnum*, rehearſing all the Eſtates and the Licences.

B If the King granteth Lands to one for life, and afterwards granteth the reverſion to *D.* in fee, and then *D.* dieth, and his heir granteth the reverſion to *R.* and *W.* in fee, and afterwards *R.* and *W.* grant the reverſion to *M.* for life, and all thoſe Grants are made without Licence, and afterwards *M.* ſueth to have a Licence, that ſhe may enter after the death of the firſt Tenant for life; ſhe ſhall firſt have a Writ of *Ad quod damnum*, to enquire, *&c.* and the Writ ſhall be ſuch:

Rex dilecto Clerico ſuo P. de C. Eſcheat. ſuo in Comitat. C. ſalutem. Supplicavit M. ut cum A. dudum conceſſiſſet quod unum meſuagium cum pertin. in N. quod de nobis tenetur in capite, ut dicitur, & quod I. & B. uxor ejus tenent ad vitam ipſius B. ex dimiſſione praditt. A. quod etiam poſt mortem ipſius B. ad præfat. A. & hared. ſuos reverti deberet poſt mortem ejuſdem B. D. & hared. ſuis remaneret, ac F. filiis & hæres ipſius D. ulteriùs conceſſ. quod meſuag. praditt. cum pertin. quæ ad ipſum P. & hær. ſuos ratione conceſſionis & alius

attornamenti ſibi in hac parte ſalt. poſt mort. ejuſdem B. *reverti deberet, poſt mortem ipſius* B. R. *&* W. *& hæred. ſuis remaneret, iidemque* R. *&* W. *conceſſiſſent, quod meſ. pradict. cum pertin. quod ad ipſos* R. *&* W. *& hæred. ſuos ration. conceſſ. & attorn. prad. ſibi de premiſſ. ſalt. poſt mortem ipſius* B. *reverti debet, poſt mortem ejuſdem* B. *præf.* M. *ad totam vitam ſuam remaner. ita quod poſt mortem ipſius* M. *miſ. illud cum pertin. poſt mortem ipſius* B. K. *& hæred. ipſius* K. *remaneret licentia noſtra ſuper hoc non obtenta, Velimus concedere eidem* M. *quod ipſa meſ. illud cum pertin. poſt mortem ipſius* B. *ingredi poſſit & tenere ad totam vitam ſuam de nobis & hæredibus noſtris per ſervitia inde debita & conſueta, ita quod poſt mortem ipſius* M. *prad. meſ. cum pertin. præfat.* K. *& hæredibus ipſius* K. *remaneat, tenend. de nobis & hæred. noſtris per ſervitium ſupradict. in perpetuum: Nos per vos certiorari volentes, ſi abſque damno & prajudicio noſtri aut alterius cujuſcunque ſupplicationi pradict. annuer. velimus in hac parte, vobis mandamus quod per ſacramentum,* &c. (ut ſupra uſque ibi) *aut aliorum, ſi concedamus præfat.* M. *quod ipſa meſuag. pradict. cum pertin. poſt mortem ipſius* B. *ingredi & tenere poſſit in forma pradicta necne. Et ſi,* &c. (ut ſupra.)

And by that it appeareth that an *Ad quod damnum* ſhall be awarded, where the King granteth a Licence unto one for to enter into the Land, which Land the King might grant for a fine for alienation. And alſo it doth appear by that Writ, That a Clerk and a Chaplain was then Eſcheator of the County.

And if *B.* the King's Tenant doth alien to *A.* in fee, and C afterwards *A.* giveth back the ſame Lands to the ſame *B.* and *C.* his wife in tail, and then *A.* dieth, and then *B.* dieth without heir of his body, and afterwards *D.* brother and heir of *A.* doth releaſe all his right in the Land unto *C.* who was the wife of *B.* in fee without the King's Licence, if the King will pardon that treſpaſs for making of that releaſe. A Writ of *Ad quod damnum* ſhall be awarded to enquire what damage or prejudice the ſame ſhall be to the King, and the Writ appeareth in the Regiſter; but ſuch Writs are not uſed to be ſued forth at this day, but ſuch pardons are allowed for the Terretenant, without any ſuch Writ of *Ad quod damnum,* &c. But yet if the King be damnified by any ſuch pardon, in any point whereof he had notice; whether the ſame ſhall make void the pardon or not. *Quære.*

And if the King will grant to one to make a Ditch of a D certain length in his own Land, next to the King's Pond adjoining to draw the water from the Pool by the Ditch to his Mill, rendring yearly to the King and his heirs a cer-

tain

main rent, a Writ of *Ad quod damnum* ſhall be awarded for to enquire what damage the ſame ſhall be to the King, and the Writ ſhall recite the Grant, and the Rent reſerved.

E And if there be an ancient Trench or Ditch coming from the Sea, by which boats and veſſels uſe to paſs to the Town, if the ſame be ſtopped in any part by outragiouſneſs of the Sea, and a man will ſue to the King to make a new Trench, and to ſtop the ancient Trench, *&c.* they ought firſt to ſue a Writ of *Ad quod damnum*, to enquire what damage it will be to the King or others.

F And if the King will grant to any City the aſſiſe of bread and beer, and the keeping of weights and meaſures, an *Ad quod damnum* ſhall be firſt awarded, and when the ſame is certified, *&c.* then to make the Grant.

And it appeareth by the Regiſter, that upon every Grant to be made by the King, of Lands, Tenements, Liberties, or other things that a Writ of *Ad quod damnum* ſhall be firſt directed to the Eſcheator, to enquire what damage it will be to the King or others; and in thoſe Writs in the Regiſter, appear notable forms of Grants made in divers manners; for in every Writ the manner of the King's Grant, and the effect thereof is ſpecified and recited in the Writ of *Ad qd. damnum.*

A And if a man will give Lands unto the King in fee, unto the intent that the King ſhall give them to a Religious houſe, yet a Writ of *Ad quod damnum* ſhall be directed to the Eſcheator to enquire what damage that ſhall be to the King, or others, if the King ſhould accept thereof, and give the ſame to the Religious houſe.

B And if the King ſeiſeth Lands aliened in mortmain, and afterwards will give them again to the Abbat, *&c.* in fee, yet a Writ of *Ad quod damnum* ſhall be awarded, to enquire to whoſe damage it ſhall be, *&c.*

And ſo if an Abbat purchaſeth Lands without Licence, and afterwards the King will pardon him for the purchaſe, and grant that he may retain and keep the Lands, yet an *Ad quod damnum* ſhall iſſue to enquire, *&c.*

C And if the King's Tenant doth alien without Licence, for which the King ſeiſeth the Lands: if the King will reſtore the Lands and pardon the Treſpaſs, yet the Writ of *Ad quod damnum* ſhall iſſue forth to enquire what damage it is to the King, and if he made ſuch Grant; but that it is not in uſe at this day; but to pay a fine, and upon the Licence to enter; without ſuing ſuch Writ.

If the King be Lord, and there be Meſne and Tenant, and the Tenant holdeth of the Meſne by Homage and 20 *s.*

and the Meſne holdeth of the King in *Capite*, and afterwards the Meſne doth releaſe unto the Tenant the 20 *s.* to hold to him and his heirs by homage, and 1 *d.* without the King's Licence, the King may ſeiſe thoſe ſervices; and if he will by his Grant make reſtitution to the Tenant Paravail, an *Ad quod damnum* ſhall be granted, to enquire to whoſe damage, *&c.*

And it appeareth by the Regiſter, that if the King's Tenant doth intrude after the death of his Anceſtor, without ſuing his Livery, if the King will pardon the intruſion, yet a Writ of *Ad quod damnum* ſhall iſſue to enquire to whoſe damage the King's pardon ſhall be, *&c.*

If a Foreſter of one of the King's Forefts, who holdeth his Office of the King, granteth the ſame to another, he ought to have the King's Licence; and before ſuch Licence ſhall be granted, a Writ of *Ad quod damnum* ſhall iſſue, what damage ſuch Licence ſhall be to the King.

And ſo if the King will licenſe one to cut down his Trees or his Wood in his Foreſt, and to make aſſart of the Wood, or to put it to Tillage, a Writ of *Ad quod damnum* ſhall be awarded, as appeareth by the Regiſter.

And if the King will grant parcel of his Waſte within his Foreſt to another in Fee, rendring Rent, and that the Feoffee may encloſe the ſame with a hedge or ditch, *&c.* a Writ of *Ad quod damnum* ſhall be awarded, to enquire to what damage of the King or others the ſaid Grant ſhall be.

And if he will leaſe the ſame for years, rendring Rent, a Writ of *Ad quod damnum* ſhall be awarded to the Keeper of the Foreſt, to what damage of the King or of his Foreſt the ſame ſhall be.

And if the King will grant part of his Free Chaſe to one in Fee rendring Rent, and that he may encloſe the ſame with hedge and ditch, *&c.* a Commiſſion ſhall be directed to certain perſons, to enquire what damage to the King or others the ſame ſhall be, *&c.* and thereupon a Writ ſhall be directed to return the Enqueſt and Panel before the Commiſſioners at a certain day aſſigned by the Commiſſioners; and the Commiſſioners ſhall make a Precept to the Sheriff to doe the ſame, and to return them at the day appointed by them by their Precept.

And now it appeareth by thoſe Writs in the Regiſter, that in ancient times, upon every Grant, Leaſe, Releaſe, Confirmation or Licence to be made by the King, that firſt a Writ of *Ad quod damnum* was to be awarded, to enquire

enquire of the whole truth and every circumſtance thereof, and what damage or prejudice the King ſhould have by the ſame; and upon ſuch inquiſition certified and returned, to make the Grants, Releaſes, Confirmations, or Licences.

But now the experience is contrary, but in the Patents of Grants of Licence they put in the end theſe words;

Et hoc abſque aliquo Brevi de Ad quod dampnum, ſeu aliquibus aliis Brevibus ſive inquiſitionibus aut mandatis ſuperinde habend. fiend. aut proſequend', &c.

But in Patents of Licences, or in a Patent of Releaſe or Confirmation made by the King, thoſe words, *abſque aliquo Brevi de Ad quod damnum*, are not in thoſe Patents of Releaſes or Confirmations: But yet by reaſon of the ancient courſe and form of the Regiſter, it ſeemeth that the Patents were the better if thoſe words, *Et hoc abſque alio Brevi de Ad quod damnum*, were put into the Patents. *Quære* of the rigour of the Law, what ſhall be done in thoſe caſes where the Patents want thoſe words, *&c.*

Writ of being quit of Toll.

1 THE Writ to be quit of Toll lieth, where the Citizens or Burgeſſes of any City or Borough have been quit of Toll throughout the Realm by grants of the King's Progenitors, or by preſcription; then if the ſaid Citizens, or any man of the ſaid Cities or Boroughs, come with their Merchandizes unto any Fair or Market, and there ſell them, or buy any Merchandize, if the King's Officer will demand Toll of them againſt the King's Charter, or againſt the Uſage or Cuſtome, then he may ſue forth and have ſuch writ: *viz.*

Rex Ballivis ſuis de I. *ſalut. Cum per Chart. noſtram conceſſerimus Burgenſ. Vill. noſtræ de S. quod ipſi & eorum hæred. & ſucceſſ. Burgenſ. ejuſdem Villæ, imperpetuum ſint quiet. de Tolneo per totum regnum noſtrum & poteſtatem noſtram; vobis præcipimus, quod ipſos Burgenſes de Tolneo vobis in Villa noſtra prædict. præſtandis quietos eſſe permittatis, juxta tenorem Chartæ noſtræ prædict. ipſos contra tenorem ejuſdem non moleſtant. in aliquo ſint gravantes. Teſte*, &c. [227]

A And upon that he may have an *Alias*, a *Pluries*, and Attachment againſt the Bailies, or thoſe that do grieve him againſt the form of the Charter: and the *Pluries* is returnable in the King's Bench, or in the Common Pleas, at the will of him who would have it. And in that writ ſhall be the Clauſe, *Vel cauſam mihi ſignifices.*

And if the Grant to be quit of Toll be of the Grant of the King's Progenitors, then the form of the Writ is ſuch:

Rex Ballivis I. *de* E. *ſalutem. Cùm inter cæteras libertat. Burgenſibus villa noſtræ de* C. *per Chartas progenitorum noſtrorum quond. Regum* Angl. *conceſſas, conceſſum ſit eiſd', quòd ipſi & hæredes ſui imperpet. ſint quieti de Tolones per totum Regnum noſtrum, quas quid. Chartas per Chartam noſtram jam confirmavimus, & inſuper conceſſimus eiſd', quod licet ipſi aliquâ vel aliquibus Libertatum & Quietantiarum in eiſd. Chart. content. hactenus plenè uſi non fuerint, ipſi tamen, hæred. & ſucceſſores ſui Libertatibus & Quietantiis prad. & earum qualibet de cætero, abſque inquietatione vel impedimento, gaudeant & utantur; Vobis præcipimus,* &c.

But that laſt Clauſe ſhall not be in the Writ, if the King have not made ſuch confirmation to them. And upon that C he may have an *Alias*, and a *Pluries*, and Attachment, if need be, againſt thoſe who take the Toll, *&c.*

And the like Writ may be for thoſe who ought to be quit D of Murage, Pontage, Picage, Laſtage, Paſſage, and the like, if they be grieved or diſturbed.

And it appeareth in the Regiſter, that King *Edward* the firſt did grant unto Merchants Strangers and Aliens, that they ſhould be quit of Murage, Pannage and Pontage, *&c.* If they were grieved and diſturbed for the ſame, they ſhould have ſuch Writ, *viz.*

Rex Collectoribus muragii, pannagii & pontagii in villa de S. *ſalut. Cùm pro præſtationibus & cuſtum. nobis per Mercat. extraneos & alienigenas de bonis & mercimoniis ſuis infra regnum noſtrum adductis, per Chart. celebris memoriæ Domini Ed', quondam Regis* Angl', *avi noſtri quam inſpeximus, conceſſum ſit eiſdem, quod ipſi ſalvò & ſecurè in regnum & poteſtatem noſtr. veniant cum merchandiſis ſuis quibuſcunque, de muragio, pannagio & pontagio liberi & quieti, prout in Chart. prad. plenius continet': Vobis mand' quòd* B. *& ſociis ſuis Mercator. de Societat', &c. alienigenas, de muragio, pannagio & pontagio, in Villa pradict. præſtand. quietos eſſe permitt', juxta tenorem Chartæ prad. ipſos cont. tenorem ejuſdem non moleſtantes in aliquo ſeu gravantes; & Diſtriction', ſi eis eâ occaſione fecerit is, ſine dilatione relaxetis eiſdem; & ſi quid ab eis à xx. die Auguſti, an', &c. eâ occaſione levaveritis, id eis ſine dilatione reſtituatis. Teſte,* &c.

And if any City or Borough ought to be quit of Toll E for the Merchandiſes which they buy in another Town or place, if any of them be compelled to pay Toll, all the Corporation may bring the Writ by the name of their

their Corporation, and may have an *Alias* and Attachment thereupon, if need be, with theſe words at the end of the writ, *Et diſtrictionem, ſi quam eis ea occaſione fecerit*', &c. as before.

And the like writ a man may have againſt thoſe who will compell him to pay a certain ſum of money towards the reparation of any Bridge, of which he ought to be quitted.

And it appeareth by the Regiſter, that Spiritual and Religious perſons ought to be quit of Toll, Cuſtoms, Murage, Pontage and Pannage, and of the like, for their Goods; and if they be troubled to pay the ſame, they ſhall have ſuch writ: *Rex Ballivis ſuis de* B. *ſalut. Cùm perſona Eccleſiaſtica, ſecundum conſuetudinem hactenus in regno noſtro uſitatam & approbatam, ad Toloneum, Pannagium & Muragium de bonis ſuis Eccleſiaſticis alicubi in eodem regn. præſtand. nullatenus teneant*'; *vobis præcipimus, quod* R. *Perſonam Eccleſiæ de* E. *ad Toloneum, Pannagium vel Muragium de bonis ſuis Eccleſiaſticis vobis in Vill. noſtra prædict. præſtand. non diſtringatis, contra conſuetud. prædict', dum tamen Merchandiſas aliquas non exerceat de eiſd': & Diſtrictionem, ſi quam, &c.*

But *Herle* Juſtice ſaid, that thoſe words, *Dum Merchandiſas aliquas*, &c. were of no effect, becauſe, by his opinion, they are acquit of all things, although they do Merchandize: but now the Statute of *H.* 8. is that they ſhall not Merchandize.

And another form of writ for Spiritual Perſons is in this form:

Cùm, ſecundum conſuetud', &c. *obtentum, perſona Eccleſiaſtica ad Toloneum aliquod ſeu aliam Cuſtumam de bonis ſuis Eccleſiaſticis, vel de aliis pro ſuſtentatione ſua emptis, præſtare non debeant; vobis præcipimus, quod* A. *Perſon'*, &c. [228] *ad Toloneum aliquod vel aliam Cuſtumam de bonis ſuis Eccleſiaſticis venditis, ſeu de aliis pro ſuſtentation. ſua ibidem exempt', nullatenus diſtringatis, contra conſ. prad. & Diſtrition'*, &c. ut ſupra.

By which writs it appeareth how Spiritual perſons ſhall be diſcharged of thoſe Tolls, and impoſitions, and exactions for their Goods which they ſell or buy for their ſuſtenance, *&c.*

Tenants of ancient Demeſne by the cuſtome of the Realm ought to be quit of Toll, *&c.* in every Market, Fair, Town or City throughout the Realm; and upon that every one of them may ſue to have Letters Patents under the King's

King's Seal, to all the King's Officers, and to Mayors, Bailies, &c. and the form of the Patent is such:

Rex universis Ball. & ministris ubicunque infra regnum nostr. Angl. constitutis sal. Cum secundum conf. &c. [ut sup. per totum regnum nostrum] *Vobis mandamus, quod homines de Manerio nostro de S. si id. Maner. de antiquo Dominico Corona Angl. sit, ad Tolneum vobis,* &c. *juxta conf. prad. & Districtum. si,* &c. *In cujus,* &c. *Teste,* &c.

And also the Tenants of ancient Demesn may have a writ directed to the Bailies, or Mayor, or others who will compel them to pay Toll, that they suffer them to go quit, &c. and the form of the writ is such:

Rex Ballivis A. de I. salutem. Cum secundum consuetudinem regni nostri hactenus obtentam & approbatam, homines & Tenentes de antiquo Dominico Corona Angliæ quieti sint & esse debeant à præstatione Tolonei per totum regnum nostrum, vos nihilominus homines & Tenentes de Manerio de S. quod est de antiquo Dominico Coron. Angliæ, ut dic. ad Tolonetum vobis de bon. & rebus suis in eadem Villa præstand. gravit. distringit', & ipsi eâ occasione multipliciter inquietatis, minùs justè, ad grave dampnum ipsorum hominum & Tenent', & contra conf. prædict. sicut ex querela sua accepimus; & quia eisd. hominibus & Tenentibus injuriari nolumus in hac parte, vobis præcipimus, quod si ita est, tunc ab hujusmodi Districtionibus & inquietationibus eisdem hominibus & tenentibus eâ occasione de cætero inferend. desistentes, ipsos de hujusmodi Tolonco vobis de bon & rebus suis prad. in eadem villa præstand. quietos & permittatis, juxta conset. prædict. & Districtionem, si quam, &c.

And by the writ aforesaid it doth appear, that Tenants in ancient Demesn shall be quitted of toll, as well those Tenants who hold of the Manor which is ancient Demesn which is in the Seisin or the possession of another man than of the King, as the Tenants of ancient Demesn which hold of the Manor in ancient Demesn which is in the King's hands and possession.

And it appeareth also that they shall be quit of Toll for their Goods and Chattels which they Merchandize with others, as well as for their other goods; for the writ is general, *pro bonis & rebus suis.*

And it appeareth that that writ may be sued by all the Tenants, as a writ of *Monstraverunt* shall be sued; and also that every particular person who is grieved may sue forth the writ if he will.

And also the Lord in ancient Demesn himself shall be a

wel

well acquited of Toll throughout the Realm as the Tenants in ancient Demeſn ſhall be; and that appeareth by the Regiſter, of an Attachment ſued by the Lord of the Manor in ancient Demeſn againſt the Bailies of *C.* becauſe they took Toll of him. And they ſhall not be onely quit of Toll, but alſo of Pontage, Paſſage, and the like.

C And alſo they ſhall not be contributary to the expences of the Knights in Parliament; and if the Sheriff will diſtrain them, or any of them, to be contributary for their Lands in ancient Demeſn, then they may ſue forth a writ directed to the Sheriff, that he do not compell them to be contributary to the expences of the Knights, *&c.* Commanding them in the ſame writ, that if they do diſtrain them, or any of them, that they re-deliver the Diſtreſs, *&c.* And the writ may be ſued by all together, as a *Monſtraverunt* ſhall be directed to the Sheriff, or by any of them who are ſo diſtrained.

D And Tenants at will within ancient Demeſn ſhall be diſcharged of Toll as well as the free Tenants, or Tenants for term of life, or for term of years of Lands in ancient Demeſn, ſhall be diſcharged of Toll for their goods, *&c.*

E And ſee 7. *H.* 4. that a Tenant in ancient Demeſn may Merchandize, buy and ſell, and ſhall not pay Toll: and the ſame agreeth with the Regiſter. But *T.* 9. *H.* 6. it is holden that they ſhall not pay Toll of things coming of their Tenements within ancient Demeſn, nor for things bought for their ſuſtenance, *&c.* but for other things it is a queſtion: but foraſmuch as they ſhall be quit of Pontage, Murage, and Paſſage, I conceive that they ſhall be quit of Toll generally, although they do Merchandize with their goods. And the Toll ought always to be paid by the buyer, and not by the ſeller: if it be not by ſome ſpecial Cuſtome, *&c.* 19 H. 6. 66. *Newton.*

F And the Villains of Lords who come to Parliament ſhall not be contributaries to the expences of the Knights of the Counties who come to the Parliament; But the Lords ſhall have Letters in their own names, directed to the Sheriff, commanding him that he do not diſtrain their Villains to be contributary to thoſe expences of the Knights, and if he hath diſtrained them, to deliver the ſame to the ſaid Villains. [229]

And it ſeemeth reaſonable that the Villain may, if he will, ſue the writ, as well as the Lord, *&c.* which writs do appear amongſt the writs to be quit of Toll.

A And alſo Chaplains who are Maſters of the Chancery, who are attendants at Parliaments, ſhall not be contributary by reaſon of their Benefices unto the expences of Proctors

Proctors made for the Clergy who come to the Parliament; and if they be, they ſhall have a writ to the Archdeacon and his Officers, commanding them for to diſcharge them, and upon that they may have an *Alias*, and a *Pluries*, and Attachment againſt them; and the writ is ſuch:

Rex Archidiacono Midd. *& ejus Offic. ac eorum Commiſſar. ſalut. Cum in Parliamento noſtro apud* Weſtmon. *anno regni noſtri quarto convocato, per Nos, & per Prælatos, Comites, Barones, & totum Concilium noſtrum, ibidem concord. fuiſſet, quod Clerici noſtri de Cancell. beneficiati, in Parliamentis, Conſiliis & Tractatibus noſtris, ad obſequendum nobis & populo regni noſtri perſonaliter exiſtent', ad contribuendum ratione Beneficior. ſuorum expenſ. Procuratorum de Clero aliquarum Dioc. ad hujuſmodi Parliamenta, Conſilia & Tractatus de mandato noſtro venientium, dum in eiſd. præſentes forent, eſſent quieti: Nos Concordiam prad. illeſam in omnibus, maxime cum expenſ. prad. propter abſentiam illorum qui dictis Parliamentis, &c. non inter fuer. præſtent. volentes obſervari, Vobis mandamus, quod* T. *Perſonam Eccleſ. de* N. Lond. *Dioc', qui Cleric. de Cancell. noſtra eſt, & qui in Parliamento noſtro apud* Weſtmon. *ultimo tento in obſequio noſtro & communitat. populi regni noſtri præſens fuit, ad contribuendum ratione Beneficii ſui prædict. expenſ. Procuratorum qui ad dictum Parliamentum pro Clero dictæ Dioceſ. vener', ſeu aliorum Procuratorum qui ad alia Parliamenta, &c. per nos nunc tenenda venire contingit, dum hujuſmodi obſequiis intenderit, nullatenus compellat', ſeu per miniſtros veſtros aliqualit. compelli permitt', ſed ipſum de expenſ. hujuſmodi quietum eſſe faciat', juxta Concordiam ſupradict'; & ſi quid ab eo ea occaſione levatum fuerit, id ei ſine dilatione reſtitui; non Proceſſibus, ſi qui ad Cenſuras Eccleſiaſticas contra ipſum ex cauſa prad. facti fuerint, ſuperſederi, & ſententiæ, ſi qua in ipſum fulminata fuerit, ſine dilatione revocari faciatis. Teſte, &c.*

Quare for that Statute; and by that appeareth, that the Parliament may bind the Clergy by the Acts and Statutes made in Parliament.

Writ de Libertatibus allocandis.

THE Writ *de Libertatibus allocandis* lieth where any Citizen or Burgeſs, or other man, is impleaded before the Kings Juſtices, Juſtices errant, or Juſtices of the Foreſt, and he claimeth and pleadeth any grant of Liberty made unto him by the King, or unto any City or Borough whereof he is a Burgeſs, and the Juſtices do delay to allow that Liberty; then he who is ſo delayed by the ſaid Juſtices may ſue forth ſuch writ directed to the Juſtices, commanding them to allow the ſame: and the writ is ſuch:

Rex Juſticiar. ſuis de Banco ſalutem. Quia Burgenſ. noſtri de N. *per Chartas progenitor. noſtror. quond. Regum* Angl. *clamant habere diverſas Libertates, quibus ipſi & anteceſſores ſui Burgenſ. ejuſd. Villæ à tempore confectionis Chartarum prad. ſemper hactenus uſi ſunt & gaviſi, ſicut dicunt: Vobis mandam', quod ipſos Burgenſ. Libertat. prad. coram vobis in Banco uti & gaudere permittat', juxta tenorem Chartar. prad. prout eis uti & gaudere debent, ipſique & anteceſſores ſui prad. Libertat. illis à tempore prad. ſemper hactenus rationabilit. uti & gaudere conſueverint. Teſte,* &c.

And if any do claim a ſpecial liberty to be impleaded within the City or Borough, and not out of the City, then the writ ſhall be ſpecial, thus:

Rex eiſdem, &c. *ſalutem. Cum inter cæteras Libertates quæ ad meliorationem Villæ noſtræ de* R. *per Chartas progenitor. noſtror. quondam Regum* Angl. *conceſſa ſint Burgenſ. ejuſd. Villæ, conceſſum ſit eiſdem, quod ipſi non implacitent ſeu implacitentur alibi quam infra Burgum prad. coram,* &c. *ejuſd. Vill', de aliquibus tenur. intrinſecis, ſeu tranſgr. & contractibus infra eund. Burgum factis, prout in Chartis prad. plenius continet. qua quidem Libertate iidem Burgenſes & anteceſſores ſui ejuſd. Villæ Burgenſ. a tempore confect. Chartar. prad. ſemper hactenus rationabiliter uſi ſunt ſicut dicunt: Vobis mand', quod eoſdem Burgenſes Libertate prad. coram vobis uti & gaudere permittat'. juxta tenor', Chartar. prad. prout ipſi eis uti debent, ipſique & anteceſſor. ſui prad. à tempore prad. ſemper hactenus uti & gaudere conſuever. Teſte,* &c.

And every one who claimeth any Liberty, and juſtifieth by the ſame any act done by him in any Court before any manner of Juſtice or Juſtices, and the Juſtices will not allow that liberty, or delay to allow the ſame, then he may ſue forth that writ. And thoſe writs are of ſeveral forms, as appeareth by the Regiſter, and may be ſued by [230]

a

a Body corporate, or by any ſingle perſon, as the caſe ſhall happen, *&c.* And the Barons of the Cinque-ports may ſue forth ſuch writs, if they be delayed to have their Liberties allowed unto them.

And the like writ may be ſued to the Juſtices of the Foreſt, commanding them to allow Charters granted to any perſons, to have Paſture, or to be quit of Paſſage there.

Writ de Corrodio habendo.

So every common perſon, if he be Founder, and doth not give in *Franke-almoigne*: 44 E. 3. 24 & 50. *Aſſ.* 6.

THE Writ *de Corrodio habendo* lieth where the King is the Founder in the right of his Crown of any Abby or Priory, or other Religious Houſe. Now of common right the King ought for to have a Corrody, and a reaſonable allowance for any of his Vadelets in the ſame Houſe. And ſo of every Biſhoprick in *England* or *Wales*, the King ought to have a reaſonable Penſion for his Chaplain, until the Biſhop have promoted him to a convenient Benefice. And the form of the writ for the Corrody is ſuch:

Vid. 21. E. 4. 8. That the King writ for his Vadelet by his Prerogative, by which *Br.* collects, that a Founder common perſon ſhall not have a Corrody.

14 H. 6. 11. If the King found a Frank Chapel, he ſhall not have Corrody nor Penſion.

1 E. 4. 10. the Writ ought to contain the King's Title to the Corrody.

Rex dilectis ſuis in Chriſto Priori & conventui de N. ſalut. Volentes dilecto Vadeleto noſtro de S. ſibi de ſuſtentatione congrua provideri, ipſum ad vos duximus tranſmittend', rogantes quatenus ipſum S. in Domum veſtram prad. admittentes, ei talem ſuſtentationem in omnibus qualem P. jam defunct. habuit dum vixit in ead. miniſtrari, & ei Literas veſtras communi Sigill. Domus veſtra ſignatas, mentionem de bis qua de ead. Domo veſtra ſic percipit facientes, ſibi ſuper hoc fieri & ei liberari fac. pro quo nihil agend. Domui veſtra prad. tener. volumus ſpecial. in futurum & quid inde ad hunc regatum noſtrum duxeritis faciend. nobis reſcribat. per preſent. portatorem, Teſte, &c.

There is another form of writ, where the King will writ for the Servants of his Grandfather or Father, thus:

Rex eiſd', &c. ſalutem. Attend. gratis & Laudabilia obſequia quæ dilect. ſervientes noſter A. avo noſtro & nobis hactenus impend. volentes eid. A. cui de ſuſtentat. ſuis per ipſ. avum ſeu patrem noſtrum aut nos annil. eſt proviſum, de bujuſm. ſuſtenturione providere, ut tenemur, ipſum ad vos ducimus deſtinand', rogantes quatenus ipſum A. in Domum veſtram prad. admitt.

admitt', ei talem sustent. & in victu & vestitu & al. necessariis qual. R. non defunct. habuit ad manut. dicti ord. nostri de dict. Domo vestra percipiend. ministretis, sibique Literas vestras patent', &c. ut supra.

C And so where the King is Founder of any Abby or Priory of Nuns, the King shall have a Corrodie for the Queens Maidens, or others of her Cousins, for whom he pleaseth for to write, *&c.* But if the King will write unto an Abby of Monks, for a Maiden to have a Corrodie there for her sustenance, *&c.* it seems the same shall not be obeyed, for the inconveniency thereof, not contrary, if he write to a Nunnery for his Vadelet, to have a Corrodie there: *Tamen quare.*

D There is another form of writ thus:

Rex dilectis & fidelibus suis Abbati & Conventui de B. *salutem. Volentes de gratia nostra speciali dilecto Valecto nostro* R. *pro exitu boni servitii sui nobis impensi & impendend', cui de sustentat. congrua, &c. ut supra.*

E And upon these writs, if the Abbot or Prior will not do according as he is directed to do by the writ, an *Alias* and a *Pluries* shall be awarded, *vel causam nobis significet*, shall be in the writ of *Pluries*, and shall be returned unto the King's Bench; and if he do not return the same, an Attachment shall be awarded against the Abbas, Prior, or Prioress.

And if the King write for such a Corrodie unto an Abby or Priory, and they grant parcel of the Corrodie unto him for whom the King writeth, but not all, nor so much as others had before; then the King, upon a surmise thereof made in the Chancery, shall grant a writ of *Sicut alias*, directed unto the said Abbat or Prior, *&c.* desiring them that they grant the like livelyhood in all things as any other hath had before in the same house. And if the Abbat or Prior upon the *Pluries* return any matter of excuse, wherefore he ought not to grant such Corrodie, which return cometh unto the Court where the Return is made, be it in the Chancery or in the King's Bench, to be no sufficient Return, then the King shall grant such writ:

Rex,

Note, If an Abby which a Canon person hath cometh to the King by Escheat; yet he shall not have a Corrodie, because it is not of his foundation. L. 5. E. 4. 118. *Br. Corrodie* 16. Yet the King may have a Corrodie where he is not Founder, but that is by special Grant. 2 E. 4. 10.

38 E. 3. *Br. contemp.* 5. & 39 H. 6. 48. If the Abbat will not admit the King's Vadelet, he who ought to be admitted shall recover damages, and not the King, for that the King hath onely the Presentation to the Corrodie, and the party the damages.

44 E. 3. 25. *per Knevit*, if the King and another give Land to erect, *&c.* the King is Founder.

22 E. 4. 17. 18, 19. *Huffey* and *Fairfax*. If an Abbat grant to *A.* to have a Corrodie, *nihil operatur* by the Grant: but if he grant Corrodie, or so much Bread and Ale *&c.* it is a good grant of those things, but it is no Corrodie, but a profit; for every Corrodie hath his beginning by the Founders ship.

Rex, &c. salut. Cum nuper volentes dilecto nobis N. pro suis diutini servic. sui Dom. Ed. nuper Reg. avo nostro & nobis bactenus impens. de sustentat. congrua providere, ipsum ad vos miserimus, & vobis plur. mandaver. rogantes quatenus eund. N. in Domum vestram admitteretis, & ei talem sustentation. &c. concederetis, & Literas, &c. faceret. vel causam nobis significaretis, quare mandat. nostris toties vobis inde direct. minime paruistis; ac vos quasd. causas excusat. nobis in Canc. nostram miseritis quas insufficient. reputavim. Vobis igitur mandam. firmiter injungentes, quatenus eund. N. in domum vestram, &c.

And if an Abbat or Prior at the King's request do grant a Corrodie to *B.* for life, and afterwards *B.* will surrender the Grant of his Corrodie unto the Abbat or Prior, to the intent that *C.* have the same for his life, then he ought for to sue a writ to the Abbat or Prior thus:

[231] *Rex dilectis sibi, &c. Priori & Conventui de R. salutem. Cum dilectus nobis S. quandam certam sustentationem in Prioratu vestro prad. ad rogatum nostrum obtinet, & in voluntat. existit quod dilect. Valectus noster N. habeat totum statum quem idem S. habet in sustentatione praedict. & ad illum effectum S. Literas patentes sibi de dicta sustentatione per vos factas vobis restituere sit paratus, sicut dicit, supplicans nobis ut assensum nostrum ad hoc praebere dignemur: Nos supplicationi illius S. annuentes, & insuper volentes praef. N. gratiam uberiorem facere in hac parte, Vobis mandam. rogantes, quod si idem S. dictas Literas ad effectum prad. restituere voluerit, tunc receptis penes vos Literis illis, ipsum N. in Domum vestram prad. admittentes, ei sustentat. prad. ad totam vitam ipsius N. de dicta Domo vestra percipiend. concedat. eique Literas vestras patentes de ead. sustent. sub sigill. Domus vestra prad. fieri & ei deliberari fac; & quod ad hanc rogatum nostrum duxeritis faciend. nobis rescribat. per praesent. portatorem. Teste, &c.*

19 E. 3. *Fines* 50. A. Fine was levied of a Corrodie. 10 *Ass.* 11. *Br. Corrodia.* 8 *Nuper obiit* of a Corrodie, and dec. *de libero tenem*; *quod vid.* 14 H. 6. 11. and 22. Assise lieth of a Corrodie, contrary of a Pension.

And upon that he shall have an *Alias*, and a *Pluries*, and Attachment, if need be.

And if an Abbat or a Prior admit one to a Corrodie, upon the King's writ sent him, if he dieth who is so admitted, the King may write for another to have the same Corrodie.

But if the King have a Pension in any Abby or Priory for his Chaplain, if the Abbat or Prior upon the King's Letter grant a Pension to his Chaplain, and the Chaplain dieth,

dieth, the King cannot write for or grant a new Penſion unto another Chaplain during the ſaid King's life; and if he do, the Prior is not bound to grant the ſame: but it is otherwiſe of a Corrodie. 14 H. 6. 11 and 12.

And yet ſome ſay, that upon the Ceſſion of an Abbat or Prior, the King ſhall have a new Penſion granted to his Chaplain: but *Quere* of that. 14 H. 6. 12.

C And if the King have a Corrodie in an Abbey or Priory to have certain Bread, and certain Gallons of Beer, &c. the King may grant the ſame to ſeveral men: but where he hath a Corrodie to have livelyhood of one man, to ſit with the Servants of the Abbat, there he cannot grant the ſame but D to one man onely. And the King may releaſe to the Abbat or Prior his Title to the Corrodie, if he will. 8 E. 4. 17. 2c. 14 H. 6. 11 and 12.

E And if the Abbat or Prior do receive one to a Corrodie upon the King's Letter, and thereupon doth make him a Grant thereof; thereby the Abbat or Prior and their Succeſſors ſhall be bound for ever. Otherwiſe it ſeemeth if the Abbat had granted the ſame upon the King's requeſt.

F And *T.* 4 *E.* 3. it is holden, that the Abbat or Prior who holdeth of the King in *Frank-almoigne* ſhall not be chargeable with any Corrodie. 50 *Aſſ.* 6. 44 E. 3. 24. 2c.

Writ de Annua Penſione.

G AND whence the King hath a yearly Penſion out of an Abbey or Priory for his Chaplain the King ſhall ſend his Writ unto the Abbat or Prior, &c. to grant the ſaid Penſion to his Chaplain; and the Writ ſhall be ſuch:

Rex dilectis in Chriſto Abbati & Conventui de C. *ſalutem. Cùm vos ratione novæ creationis veſtræ præſ. Abbat. teneamini uni de Clericis noſtris, quem vobis duxerimus nominand. in quadam Annua Penſione de Domo veſtra percipiend', quouſque ſibi proviſum ſit de Beneficio Eccleſiaſtico competenti; ac nos promotionem dilecti Clerici noſtri à ſuis exigent. meritis affectantes, ipſum ad hujuſmodi Penſionem à vobis percipiend. duxerimus nominand'; Vobis igitur mandamus, quatenus eidem A. talem Penſionem de dicta Domo veſtra in forma prad. percipiend', qua dantes deceat, percipientique fortiùs obligatum reddere debeat, concedatis, Literas veſtras pat. ſigill. Capituli veſtri ſignat. eidem A. ſuper hoc fieri facient'. Et quod inde duxer. faciend. nobis ſine dilat. rea ſcribat'. Teſte,* &c.

And the form of the Grant of the Penſion is ſuch: H

Univerſis ad quos præſentes Litera pervenerint Abbas de T. *& Conventus ejuſd. loci ſalut', &c. Noveritis nos, ad inſtantiam Illuſtriſſimi Principis* Ed. *Dei gratiâ Reg. Angl', dediſſe & conceſſiſſe dilecto nobis in Chriſto* A. *Clerico, centum ſolidos ſterlingorum in Feſto S.* Mich. *annuatim de Camera noſtra percipiend', quouſque eid.* A. *de Beneficio Eccleſiaſtico competenti ſibi per nos fuerit proviſum, & hoc ei quàm citiùs facultas ſe obtulerit facer. promittimus. Dict. autem* A. *per ſe, vel ſuum Procur. legit. ad hoc conſtitut', dictos* v. l. *ſingulis annis apud S. recipiat. In cujus, &c. commun. ſigill. Domûs noſtræ duximus apponend'. Dat' in Capitulo noſtro, &c.*

And it appeareth by an ancient Roll in the Exchequer, of what Abbies or Priories the King ought to have a Corrodie and Penſion, and of what a Penſion onely, and what a Corrody onely; the Copy of which followeth.

The Names of the Corodio's and Penſions in England *which are of the King's Gift, according to the Book in the Exchequer.*

IN the Abbey of *Glaſſenbury*, 1. *C.* 1. *P.*
In the Abbey of *Mochelny*, 2. *C.* 1. *P.*
In the Abbey of *Tewkſbury*, 1. *C.*
In the Abbey of *Clive*, 1. *C.* 1. *P.*
In the Abbey of *Ford*, 1. *C.*
In the Abbey of *Buckfaſt*, 1. *C.*
In the Abbey of *Sherburn*, 1. *C.* 1. *P.*
In the Abbey of *Abbatsbury*, 1. *C.* 1. *P.*
In the Abbey of *Bewly*, 1. *C.* 1. *P.*
In the Abbey of *Shaftsbury*, 1. *P.*
[232] In the Abby of *Wintan*, 1. *C.* 1. *P.*
In the Abbey of *Worwel*, 1. *P.*
In the Abbey of *Hide*, 1. *C.* 1. *P.*
In the Abbey of *Battel*, 1. *C.* 1. *P.*
In the Abbey of *Waverly*, 1. *C.*
In the Abbey of *Malmsbury*, 2. *C.* 1. *P.*
In the Abbey of *Sleveborn*, 1. *P.*
In the Abbey of *Southwick*, 1. *C.* 1. *P.*
In the Abbey of *Suſeſter*, 2. *C.* 1. *P.*
In the Abbey of *Stonley*, 1. *C.*
In the Abbey of *Briſtolm*, 1. *P.*
In the Abbey of *Hurtey*, 1. *C.*
In the Abbey of *Reading*, 1. *C.* 1. *P.*

In

In the Abbey of *Meſſenden*, 1. *C.*
In the Abbey of *Glouceſter*, 2. *C.* 1. *P.*
In the Abbey of *Langton*, 1. *P.*
In the Abbey of *Eveſham*, 1. *C.* 1. *P.*
In the Abbey of *Perſhore*, 1. *C.* 1. *P.*
In the Abbey of *Winchcomb*, 1. *C.* 1. *P.*
In the Abbey of *Oſney*, 1. *C.* 1. *P.*
In the Abbey of *Tame*, 1. *C.*
In the Abbey of *Dorceſter*, 1. *C.* 1. *P.*
In the Abbey of *Abingdon*, 2. *C.* 1. *P.*
In the Abbey of *Eveſham*, 1. *C.* 1. *P.*
In the Abbey of *Godſtow*, 1. *P.*
In the Abbey of *Notley*, 1. *C.*
In the Abbey of *Southampt.* 1. *C.* 1. *P.*
In the Abbey of *Lilſil*, 1. *C.*
In the Abbey of *Shrewsbury*, 1. *C.* 1. *P.*
In the Abbey of *Cheſter*, 1. *C.* 1. *P.*
In the Abbey of *Valerial*, 1. *C.*
In the Abbey of *Burton*, 1. *C.* 1. *P.*
In the Abbey of *Thorney*, 1. *C.* 1. *P.*
In the Abbey of *Ramſey*, 1. *C.* 1. *P.*
In the Abbey of *Peterborough*, 1. *C.* 1. *P.*
In the Abbey of *Crowland*, 1. *C.* 1. *P.*
In the Abbey of S. *Benedict* in *Norfolk*, 1. *C.* 1. *P.*
In the Abbey of *Bury*, 1. *C.* 1. *P.*
In the Abbey of *Tetſurth*, 1. *C.* 1. *P.*
In the Abbey of *Pipwel*, 1. *C.* 1. *P.*
In the Abbey of *Leiceſt*, 1. *C.*
In the Abbey of *Newſted*, 1. *C.*
In the Abbey of *Pomfret*, 1. *C.* 1. *P.*
In the Abbey of *Worſhore*, 1. *C.*
In the Abbey of *Blith*, 1. *C.*
In the Abbey of *Waltham*, 2. *C.* 1. *P.*
In the Abbey of *Barking*, 1. *C.*
In the Abbey of *Tower-hill*, 1. *C.*
In the Abbey of *Bermondſey*, 1. *C.*
In the Abbey of *Chriſtchurch-land.* 1. *C.* 1. *P.*
In the Abbey of *Feverſham*, 1. *C.*
In the Abbey of *Chirſey*, 1. *C.*
In the Abbey of S. *Mary* in *York*, 1. *C.*
In the Abbey of *Durham*, 1. *C.* 1. *P.*
In the Abbey of *Tinmouth*, 1. *P.*
In the Abbey of *Whitby*, 1. *C.* 1. *P.*
In the Abbey of *Mewes*, 1. *C.*
In the Abbey of *Alney*, 1. *C.* 1. *P.*
In the Abbey of *Wardon*, 1. *C.*
In the Abbey of *Criſton*, 1. *C.*
In the Abbey of *Selby*, 1. *C.*
In the Abbey of *Sparhall*, 1. *C.*
In the Abbey of *Dorſley*, 1. *C.*
In the Abbey of *Spalding*, 1. *C.*

In the Abbey of S. *Auguſtine* in *Canterbury*, 1. C. 1. P.
In the Abbey of *Thornton*, 1. C. 1. P.
In the Abbey of *Twierdart*, 1. C.
In the Abbey of *Noveyton*, 1. P.
In the Abbey of *Cateſhall*, 1. C.
In the Abbey of *Monmouth*, 1. C.
In the Abbey of *Weſtminſter*, 1. P.
In the Abbey of S. *Saviour's* in *Canterbury*, 1. C. 1. P.
In the Abbey of *Daventry*, 1. C.
In the Abbey of *Criſtall*, 1. C.
In the Abbey of *Stratford*, 1. C.
In the Abbey of *Milton*, 2. C.
In the Abbey of *Sterne*, 1. C. 1. P.
In the Abbey of *Combe*, 1. C.
In the Abbey of *Grenuby*, 1. P.
In the Abbey of *Merival*, 1. C. 1. P.
In the Priory of *Bath*, 1. C.
In the Priory of *Mountagn*, 1. C.
In the Priory of *Taveſtock*, 1. C.
In the Priory of S. *Auguſtine* in *Briſtol*, 2. C. 1. P.
In the Priory of *Almsbury*, 1. C.
In the Priory of *Stetborne*, 1. C.
In the Priory of *Bradſtow*, 1. P.
In the Priory of *Worceſter*, 1. C.
In the Priory of *Sedſworth*. 1. C. 1. P.
In the Priory of *Dunſtable*, 1. C. 1. P.
In the Priory of *Royſton*, 1. C.
In the Abbey of *Kenelworth*, 1. C. 1. P.
In the Priory of *Coventry*, 1. C.
In the Priory of *Tutbury*, 1. C.
In the Priory of *Ely*, 1. C.
In the Priory of *Bedwell*, 1. C.
In the Priory of *Norwich*, 1. C. 1. P.
In the Priory of *Lenton*, 1. P.
In the Priory of *Sefword*, 1. C.
In the Priory of *Martin*, 1. C. 1. P.
In the Priory of *Lewes*, 1. C.
In the Priory of *Wenlok*, 1. C.
In the Priory of *Winchester*, 1. C. 1. P.
In the Priory of *Bardſly*, 1. C.
In the Priory of *Standeate*, 1. C.
In the Priory of S. *Andrews* in *Northampton*. 1. C. 1. P.
In the Abbey of *Bodman* in *Cornwall*, 1. C.
In the Abbey of S. *James* in *Northampton*. 1. C. 1. P.

Writ de Idiota inquirendo & examinando.

A NOte, that the King by the Law of right is for to defend his Subjects, their Goods and Chattels, Lands and Tenements; and therefore in the Law every loyal Subject is taken into the King's Protection; and if he be put out of the King's Protection for his Offence, then every man may doe to him as againſt the King's Enemy, and he hath no remedy for the ſame by the King's Laws. And becauſe that every man is within the King's Protection, an Idiot, who cannot defend or govern himſelf, nor order his Lands, Tenements, Goods nor Chattels; the King of right ought for to have him in his cuſtody, and to rule him and his Lands and Tenements, Goods and Chattels; and that appeareth by the Statute of *Prærogativa Regis, cap.* 8.

B And therefore when the King is informed, that one who hath Lands or Tenements is an Idiot, and is a Natural from his birth, the King may award his Writ to the Eſcheator of the County where ſuch Idiot is, or unto the Sheriff, to enquire thereof; and the Writ which ſhall be directed to the Eſcheator ſhall be ſuch: *Stamf. Prærog.* 34. 18 E. 3. *Scire fac.* 19.

Rex Eſcheatori ſuo, &c. *ſalutem. Quia accepimus quòd* I. *de* B. *Fatuus & Idiota exiſtit, itâ quòd regimini ſui ipſius, terrarum, tenementorum, bonorum & catallorum ſuorum non ſufficit, & quòd ipſe in fatuitate ſua magnam partem terrar. & tenement. ſuorum alienavit, & etiam magnam partem bonorum & catallorum ſuorum diſſipavit, in exhared. ſuam, & noſtri prejudic. manifeſtum: Nos indemnitati ipſius in hac parte proſpicere volentes, vobis mandamus, quòd ad ipſum* I. *in propria perſona veſtra accedatis, & ipſum viis & modis quibus ſuper ſtatu ſuo melius poteritis informari circumſpectè examinetis, & nihilominus per ſacramentum proborum & legalium hominum de Ball. veſtra, per quos rei veritas melius ſciri poterit, diligenter inquiret', ſi idem* I. *Fatuus & Idiota ſit, ſicut prad. eſt, necne: & ſi ſit, tunc utrùm à nativitate ſua, an ab alio tempore; & ſi ab alio tempore, tunc à quo tempore, & qualit', & quomodo; & ſi lucid. gaudeat intervallis; & ſi id.* I. *in eod. ſtatu exiſtens terras aut tenementa aliqua alienavit, necne; & ſi ſic, tunc quas terras & qua tenement', & ubi, & cui vel quibus, & in cujus vel in quor. manib. ter. & tenementa ſic alienat. exiſtunt, & qualiter, & quomodo, & qua terr. & qua tenementa ſic adhuc remanent, & de quo vel de quibus tam terr. & tenem. ſic alien', quàm terr. & tene-*

[233]

menta sibi retenta, teneant', & per quod servic', & qualit', & quomodo, & quantum valeant per an. in omnibus exitibus, & quis propinquior har. ejus sit, & cujus ætatis. Et inquisic. indè distinctè & apertè fact. nobis in Canc. nostram sub sigillo vestro & sigillis eorum per quos, &c. mittat, & hoc breve. Teste, &c.

And there are two other manners of Writs of another form A in the Register, which are directed unto the Escheator, to go to such Idiot, and to examine him, and to enquire thereupon. And the form of the Writ which is directed unto the Sheriff for to enquire of an Idiot is such:

Rex Vic', &c. Præcip. tibi, quod per sacram', &c. diligent. inquiras utrum I. de B. frat. & hæres T. de B. à nativit. suæ remanet semper infirmus vel fatuus idiota extiterit, per quod custodia terrar. & tenturarum fuarum in C. ad nos debeat pertinere, an per Infortunium vel alio modo in hujusm. infirmitat. postea incident, propter quod hujusmodi custod. ad nos pertiner. non debeat; & si per Infortunium vel alio modo, tunc per quod infortunium, & qualit. & quo modo, & cujus ætatis fuerit, & de quo terra & tenementa immediatè tent', & per quod servic', & quo modo ea teneat, & quant. valeant per ann. in omnibus exit', & quis medio tempore exit. eorum percepit. & inquisic. indè distinctè & aperte, &c.

And there is a form of Writ directed to the Sheriff, for to inquire of Idiots, which is much of the like form as the first Writ above is; and it is directed to the Escheator to make the enquiry.

And although a man be found Idiot by Inquisition taken before the Escheator, or before the Sheriff, and by their Examination, &c. and that be returned into the Chancery; yet he who is so found Idiot may in person, or by his friends, come into the Chancery before the Chancellor and the King's Council, and shew the matter, and pray that he may be examined before the Chancellor and the King's Council, whether he be Idiot or not: or he may sue forth a Writ out of the Chancery to certain persons, to bring him who is so found Idiot before the King and his Council to *Westminster*, to be there examined; and if he be brought thither and examined, and found to be no Idiot; then the Inquisition found before the Escheator, or Sheriff, and also the examination which the Sheriff hath made, and returned thereupon, shall be of no effect, but the same Office shall be taken as void, without any other traverse, as it seemeth. And the Writ which shall be directed to the party to bring the Idiot before the King's Council shall be such:

Rex

Rex I. *de* T. *ſal'. Quia datum eſt nobis intelligi, quod* R. *frater tuus, filius & her.* B. *defuncti patris tui, Idiota eſt, & non ſanæ mentis exiſtit ità quòd regimini ſui ipſius aut terrarum ſuarum providere non ſufficit; Nos, volentes de ſtatu prad.* R. *fratris tui certiorari, tibi præcipimus, firmiter injungentes, quòd ſtatim viſis præſent', prad.* R. *in cuſtodia tua exiſtent', ut dic', coram nobis & Concilio noſtro apud Weſtm. ſine dilatione duci fac', ità quòd ſit ibidem hâc inſtante die* Jovis, *ibid. coram eod. Concilio noſtro examinand', & ad faciend' de eo quod per adviſamentum Concilii noſtri ſuper hoc duxerimus ordinand'. Et hoc ſub pœna centum librarum nullatenus omittas. Teſte,* &c.

B And he who ſhall be ſaid to be a Sot and Idiot from his birth, is ſuch a perſon who cannot accompt or number twenty pence, nor can tell who was his Father, or Mother, nor how old he is, *&c.* ſo as it may appear that he hath no underſtanding of reaſon what ſhall be for his profit or what for his loſs: But if he have ſuch underſtanding that he know and underſtand his letters, and to reade by teaching or information of another man, then it ſeemeth he is not a Sot, nor a natural Idiot.

Writ de Apoſtata capiend'.

C THE Writ *de Apoſtata capiend'* lieth where a man doth enter into Religion, and is profeſſed, and afterwards he leaveth his houſe, and is vagrant, and running about the Countrey, againſt the Rules of his Order of Religion; then the Abbot or Prior where he is profeſſed may certifie the ſame under his Seal into the Chancery, and pray to have a Writ to the Sheriff to apprehend him, and deliver him to the Abbot or his Attorney; and the form is ſuch:

Rex Vic', &c. ſalut'. Quia frat. I. *Canonicus de* A. *ſpretâ Habitu Ordinis illius, in Habitu ſeculari de patria in patriam* [234] *in Ballivâ tua vagatur & diſcurrit, in animæ ſuæ periculum & ordinis ſui ſcandalum manifeſtum, ſicut dilect. nobis Abbas de* A. *nobis ſignificavit per Literas ſuas patentes; Tibi præcipimus, quod præf.* I. *ubicunque in Ball. tua inveniri contigerit, ſine dilatione arreſtes, & prad. Abbati, vel ejus in hac parte Attorn', liberes, ſecund. Regulam Ordinis prad. caſtigand'. Teſte,* &c.

A And upon that he may have an *Alias* and a *Pluries* againſt the Sheriff, and an Attachment, if he will not execute the Writ.

B There is another Writ of another form thus:

Rex eidem, &c. *ſalutem. Quia frat.* T. *Monachus de* S. *Ordinis* Clunaſſen', *In Ordine illo profeſſus, ſpreto Habitu Ordinis illius*, &c. *ſicut dilectus nobis in Chriſto Abbas de* B. *per Literas ſuas patent. nobis ſignific'*; *Tibi præc', quod præf.* &c. ut ſuprá.

And it ſeemeth, that although he who departeth from his C Houſe or Religion doth not change his Habit, yet if he be Vagrant, *&c.* and the Abbat of the Houſe do certifie the ſame, he ſhall have ſuch Writ, notwithſtanding theſe words in the Writ (*ſpreto Habitu*, &c.) for thoſe are but words of form, and not of ſubſtance; for the Habit of Religion is the Obedience and Profeſſion which he hath made to ſuch Rule, *&c.* and if he relinquiſh that Obedience, and the Rules of that Religion; and departeth, it ſeemeth that he doth relinquiſh the Habit: and if that departure be certified by any Abbat where ſuch perſon was remaining, and under his Obedience when he departed and relinquiſhed his Religion, the ſame is ſufficient to have ſuch Writ upon ſuch Certificate; or if it be certified by him who is the Viſitor of the Religious Houſe, *&c.* But there are not any Writs in the Regiſter framed upon ſuch Certificate made by any Viſitor or Abbat of any other Houſe, upon which the party who left his Habit was not remaining at the time: and therefore *Quære* of the ſame.

Writ de Leproſo amovendo.

THE Writ *de Leproſo amovendo* lieth where a man is a Lazer or a Leper, and is dwelling in any Town, and he will come into the Church, or amongſt his neighbours where they are aſſembled, to talk with them, to their annoyance and diſturbance; then he or they may ſue forth that Writ for to remove him from their company, and the Writ is ſuch: D

Rex Vic', vel Majori & Vic. Lond. *ſal. Quia accepimus* I. *quod* I. *de* N. *Leproſ. exiſtit, & inter homines Civitatis prædict. communit. converſatur, & cum eis tam in locis publicis quàm privatis communicat, & ſe ad locum ſolitarium, prout moris eſt, & ad ipſum pertinet, transferri recuſat, ad grave damnum hominum prad', & propter contagionem morbi prad. periculum manifeſt'*; *Nos hujuſmodi periculo, prout ad nos pertinet, præcaver', & ſuper præmiſſ. quod juſtum eſt & uſitat. fieri volentes, vobis præcipim', quod aſſumptis vobiſcum aliquibus diſcretis & legalibus hominib. de Civitat. prad. non ſuſpect', qui de perſona præf.* I. *de* N. *& hujuſm. morbo notitiam habent meliorem, ad ipſum* I. *accedatis, & ipſum in præſentia*

prad.

prad. hominum faciatis diligent. videri & examinari; & ſi ipſum Leproſum eſſe inveneritis, ut praditum eſt, tunc ipſum huneſtiori mod. quo poteritis à communicatione prad. hominum removeri, & ſe ad locum ſolitarium ad habitand. ibid. prout moris eſt, transferri faciatis indilat. ne per hujuſmodi commun. converſationem ſuam hominibus prad. damp. vel periculum eveniat quoquo modo. Teſte, &c.

F And upon that he may have an *Alias* and a *Pluries* and Attachment againſt the Mayor, or againſt him to whom the writ is directed, if he will not execute the writ.

G But it ſeemeth, if a man be a Leper or a Lazer, and will keep himſelf within his houſe, and will not converſe with his neighbours, that then he ſhall not be moved out of his houſe. But there are divers manners of Lepers; but it ſeemeth that the writ is for thoſe Lepers who appear to the ſight of all men that they are Lepers by their Voice, and their Sores, and the Putrefaction of their Fleſh, and by the ſmell of them: But for thoſe who are infected with that Diſeaſe in their bodies, and it doth not appear outwardly upon their bodies, *Quare* whether ſuch writ lieth for to remove them.

Writ de deonerando pro rata portione.

H THE Writ *De deonerando pro rata portione* lieth where a man holdeth 10. Oxgangs of Lands by Fealty and 20*s.* Rent of the King, and the Tenant doth alien one part, or one Oxgang, to one man, and another Oxgang to another man in Fee, and ſo to other the reſt of the Oxgangs, and the Sheriff or the King's Officer will diſtrain one of the ſaid Tenants for the whole Rent, then he who is diſtrained may ſue forth that writ, which is thus:

Rex Vic', &c. ſalutem. Monſtraverunt nobis I. A. *& W. quod cum quatuor bovat. terra cum pertin. in E. quæ fuer. B. & quæ de nobis tenentur per ſervitium treſdecim ſolid. per annum, reddendorum per manus Vic. noſtri Com. prad. qui pro tempore fuerit, ad manus prad.* I. A. *&* W. *necnon ad manus* T. *ex perquiſito ſuo devenerunt; & licet iidem* I. A. *&* W. *duas bovat. terra inde tantummodo teneant, tu tamen prad. treſdecim ſolid. annuos à præf.* I. A. *&* W. *amiſſo præf.* T. *qui dictas duas bovatas terra reſiduas tenet, exigis, & ipſi* I. A. *&* W. *pro prad. treſdecim ſolidis annuis nobis reddend. per varias Diſtrictiones compellis, in ipſor.* I. A. *&* W. *diſpendium non modicum & gravamen, ſuper quo nobis ſupplicaver. eis congruum remedium adhiberi. Et quia eiſdem*

[235]

I.

I. A. & W. injuriari nolumus in hac parte, tibi præcipimus, quod si inquisit. super præmiss. faciend', vel alio modo legitimo, tibi constare poterit præd. quatuor bovat. terr. per servitium tresdecim solidorum de nobis tantummodo teneri, & ipsos I. A. & W. duas bovatas terra inde, & præd. T. alias duas bovat. terra residuas tenere, ut est dictum, tunc acceptis à præf. I. A. & W. iis quæ ad nos pertinent pro rata portione tenuræ suæ quam inde tenent, ipso de residuo servic. præd. quietos esse permittas. Proviso semper, quod dict. residuum servitii illius à præf. T. ad opus nostrum levet. ut est justum. Teste, &c.

Br. Apparcount 21. And it appeareth by that writ, that notwithstanding the Statute of *Quia emptores terrarum*, that if the King's Tenant do alien part of the Lands held of the King, yet the King or his Minister may distrain one of the Tenants for the whole Rent, &c. although that the Statute saith, *quod feoffatus teneat pro particula illa*, &c. But it seemeth the King is not bound by the Statute, but a common person is. For if a man hold 20. Acres of Land by Fealty and 20 *s.* Rent of another man, and he alieneth one Acre to one in Fee, and another Acre to another in Fee, the Lord shall not distrain the Alienee but for the rate and value of the Land which he hath purchased, and shall not distrain one Alienee for the whole Rent, &c. But if the King's Tenant doth alien part of the Lands which he holdeth of the King without Licence, then the King may chuse whether he will take the Alienee for his Tenant or not, and then it is a question whether the Alienee shall have such writ, but if the Alienee doth pay a Fine to the King for the Alienation, it is reason that he have such writ as before, if he be distrained for the whole Rent which issueth out of all the Lands, whereof he hath purchased but part, &c.

29 H. 8. f. 28. Perkins 329.

And the like writ as before is awarded to the Queen's Officers, where they distrain one Tenant for the whole Rent, where he holdeth but part of the Lands, and several other Tenants hold the residue thereof.

Br. Apparcount 21. And if a man who holdeth 100 Acres of Land, ought by his Tenure thereof to repair such a Bridge, if he alien in Fee 20 Acres to one, and 20 Acres to another, and one of them onely be distrained to make the Reparations upon a Presentment found; he shall have a special writ to the King's Officers, that they do not distrain him, but according to the rate of his portion of the Land which he holdeth. And the writ is such:

29 H. 8. f. 28.

Rex dilectis & fidelibus suis I. de T. *& sociis suis Justic. nostris ad inquirend. de defectibus magni Pontis Cant', & ad*

defectus

defectus illos reparari & emendari faciend', assignatis, salutem. Ex parte R. *nobis gravit. conquerent. est monstratum, quod cum præsentat. sit coram vobis, quod idem* R. *tenet quatuor hid. ter. cum pertin. in* D. *in Com. prad. quæ de reparatione Pontis prad. ab antiquo onerari consuever', & thus, quæ ad reparation. Pontis prad. teneri asserentur; & licet ipse nisi tantum xx. acras terræ de dictis quatuor hid. terræ, & quidam alii tatum residuorum quatuor hidar. teneant; vos tamen, occasion. Præsentac. prad. septem libras, ad quas dicta quatuor hida terra pro reparatione Pontis prædict. apportionat. sunt, de vid.* R. *ac si ipse quatuor hidas terr. prad. integre tenuerit, cum non teneat, omnibus aliis Tenentibus prædict. levar. minimè, & ipsum ea occasione gravit. distringi & multipliciter inquietari faciatis, in ipsius* R. *grave dampnum, & status sui depression. manifestum, super quo nobis supplicavit de remedio provideri. Et quia ipsum* R. *in hac parte indebit. volumus onerari, vobis mandamus, quod si per inquisition. inde in præsenc. ipsius* R. *si interesse voluerit, capiendam, vel alio modo legitimo, vobis constare poterit ipsum* R. *nisi xx. acr. dictar. quatuor hidarum terra tantummodo tenere, & resid. earund. quatuor hidarum terra in manibus aliorum Tenentium exister', ut est dictum, tunc dictos septem libras, ad quas dict. quatuor hida terra pro reparatione Pontis prædict. sic assessa sunt, tam de præf.* R. *quam de aliis Tenentibus prædict. rat. de quolibet eorund. juxta ratam tenuræ suæ earund. quatuor. hidar. terræ, nemini in hac parte parcend', ne aliquam Tenent. earund. ultra ratam tenuræ suæ indebite oneraud. levar. fac', Præsentac. prad. non obstante. Et si quid ab eodem* R. *ultra portionem tenuræ suæ minus juste levatum fuerit, id ei sine dilatione restitui fac'. Teste, &c.*

C There is another form of writ for the King's Tenant, where he is distrained for all the Rent, where he holdeth but part of the Lands out of which the Rent ought to be paid: which see in the Register.

But look the Statute of 34 *Edw.* 3. *cap.* 15. That if the King's Tenant in *Capite* alieneth his Lands in Fee without Licence, the Alienation shall not bind the King, but that he shall have his Prerogative of those Lands and Tenements: and therefore *Quære* the meaning of that Statute, and what is intended thereby.

Writ

Writ of Superſedeas.

THE writ of *Superſedeas* lieth in divers caſes: As if a man be ſued, and a *Capias* or *Exigent* be awarded againſt him, he may by his friend ſue forth a *Superſedeas* out of the place where the *Capias* or *Exigent* was awarded againſt him: or out of the Term he may ſue forth a *Superſedeas* out of the Chancery directed to the Sheriff, that he take Sureties of him, &c. to appear at the day, &c. and that he let him at liberty: or he may find Sureties in the Chancery to appear at the day of the Return of the *Capias* or *Exigent*; and upon this he ſhall have a *Superſedeas* to the Sheriff, that he let him go, if he have arreſted him thereupon; and if he have not arreſted him, that then he do not arreſt him, but ſuffer him to go in peace. And the form of the writ is ſuch: A

[236]

Rex Vic', &c. *Cum* A. *implacitet coram nobis per Breve noſtrum* B. *& quoſdam alios in dicto Brevi noſtro contentos, de quadam tranſgreſſ. eidem* A. *per præfat.* B. *& alios pradict. illato, ut dicitur, ac idem* B. *pro eo quod non venit coram nobis ad reſpondend. præfat.* A. *de tranſgreſſione pradict. in Exigend. in Com. tuo poſitus ſit ad utlagand', ipſo de Exigend. pradict. penitus ignorante, unde nobis ſupplicavit, ut, cum ipſe paratus ſit ſuper præmiſſ. in omnibus ſtare juri, velimus ei in hac parte ſubvenire: Nos, Supplicationi pradict. quatenus juſtum fuerit annuentes, tibi præcipimus, quod ſi pradict.* B. *in Com. tuo perſonaliter accedens ſe reddiderit Priſonæ noſtræ, ut eſt mos, tunc Exigend. prad. ſuperſedeas; & poſtmod. ſi idem* B. *inveneris, tibi ſufficientes Mainucaptores, qui eum mainucapient habere coram nobis ad talem diem quo Breve noſtrum de Exigend. pradict. coram nobis eſt returnabile, ad reſpondendum præf.* A. *de tranſgr. pradict. & ad faciendum ulterius & recipiendum quod Curia noſtra conſiderabit in præmiſſ. tunc præf.* B. *à Priſona pradict. (ſi ea occaſione & non alia, detineatur in eadem) interius deliberari fac. per Mainucaptionem prad. & habeas ibi nomina Mainucapt. prad. & hoc Breve.*

And when he findeth Sureties in the Chancery for to appear at the day of the Return of the *Exigent*, then he ſhall have a *Superſedeas* of another form, which ſhall be ſuch: B

Rex Vic', &c. *Supplicavit nobis* C. *quod cum* B. *implacitet coram nobis per Breve noſtrum præfat.* C. *& quoſdam alios de quadam tranſgr. eidem* B. *per præf.* C. *& alios pradict. illata,* C

ut

ut dicit, & licet idem C. paratus ſit præſ. B. de tranſgr. prad. ſi qua fuerit, reſpondere, & in omnibus ſtare jur. ſecundum Legem & conſuetudinem regni noſtri Angliæ, ipſe tamen, pro eo quod tu coram nobis returnaſti, quod idem C. non fuit inventus in Ball. tua, juxta Proceſſum inde coram nobis habitum, per te in Exigend. poſitus exiſtit in Com. tuo ad utlagand; velimus ejus indemnitati in hac parte providere. Nos, pro eo quod W. R. & I. manuceper. coram nobis in Cancell. noſtra habere præſ. C. coram nobis ad diem quo Breve noſtrum de Exigend. verſ. ipſum C. eſt returnabile, ad reſpond. præſ. B. de tranſgr. prad. vel. eid. C. &c. ſi in Exig. prad. occaſione præmiſ. & non alia, poſitus exiſtat, ut eſt dictum, tunc in Exigend. ill. ulterius faciend. interim Superſedeatis per Manucaption. ſuprad'; & habeas ibi tunc hoc Breve. Teſte, &c.

B And if the Clerk, who hath the keeping of the Rolls for the taking of Statute-Merchant, forge a Bond in the name of another, and putteth the Mayor's Seal, and a Seal in the name of the party, to the ſame, and makes an Enrolment thereof in the Rolls, and afterwards doth certifie the ſame into the Chancery, for which a *Capias* is awarded againſt the party; then he againſt whom ſuch Proceſs is ſued forth may come into the Chancery, and have a writ directed unto the Sheriff, relating therein the whole matter, and reciting that the party hath upon the matter ſued forth an *Audita querela*, directed to the Juſtices of the King's Bench, commanding them to call the parties before them, *&c.* and commanding the Sheriff, that if the party who is ſo ſued will find ſufficient Sureties to the Sheriff, to appear at the day in the King's Bench, and to pay the Debt, if he be condemned, that then he do ſurceaſe to arreſt or to trouble him, *&c.*

C And if a man do cite another by the Pope's Bull perſonally to appear at the Court of *Rome*, &c. againſt the Statutes; now if he who made the Citation be committed to Priſon, he may ſue in the Chancery to have a ſpecial writ directed to the Sheriff, rehearſing the matter, commanding him, that if the parties will find ſufficient Sureties, body for body, to appear before the King and his Council at a certain day, and perform what the Court ſhall adjudge or be decreed for the King or Council, that then he let him at large: and by that writ the Sheriff ought to ſet him at liberty; and if he will not, he ſhall have an *Alias*, and a *Pluries*, and Attachment againſt him.

D If a man depart from his Maſter without ſufficient cauſe, and another knowing the ſame doth retain him, for which the Maſter bringeth a writ againſt him for the retaining of his

his Servant, upon which a *Capias* is awarded, he may in the Chancery find Sureties to appear in *Banco* at the return of the writ, and have a *Superſedeas* thereupon to the Sheriff, not to arreſt him; and if he have arreſted him, to ſet him at liberty.

And the like writ and *Superſedeas* ſhall be awarded out of the Chancery, if the Action be brought againſt the Servant for his departure, and a *Capias* awarded, *&c.* he may find Sureties in the Chancery for to appear at the day, and have a *Superſedeas* to the Sheriff, that he do ſurceaſe for to arreſt him, *&c.*

[237]

And if a man be ſued in the Common Pleas in Debt, or in Treſpaſs for damages, and a *Capias* or *Exigent* is awarded, if the Debtor do find Sureties in the Chancery to appear before the Juſtices at the day of the return of the writ, and to ſtand right according to Law, he ſhall have a *Superſedeas* to the Sheriff not to arreſt him; and if he hath arreſted him, to ſet him at large. But it ſeemeth, that upon a *Capias* or *Exigend. ad ſatisfaciendum*, the Sheriff ought not to let the party at liberty after he hath taken him, becauſe he is in execution for the party, *&c.* And ſo upon an *Exigent* awarded in a writ of Account, he may ſue forth ſuch *Superſedeas*.

And ſo if a man doth become Surety for another, to pay a Fine in the Common Pleas or King's Bench, and the Fine is not paid, *&c.* for which cauſe Proceſs of Utlagery is awarded againſt the Surety, *&c.* at the *Exigent* awarded againſt the Surety, he may ſue forth a *Superſedeas*, and find Sureties in the Chancery to appear at the day, and to ſtand right to the Law: and thereupon he ſhall have a *Superſedeas* to the Sheriff, that he do not arreſt his Surety, and if he hath arreſted him, that he let him at liberty.

And it ſeemeth reaſonable that ſuch writ ſhall be granted, becauſe the Fine is a duty to the King, and the King may reſpite the ſame if he pleaſe; but if an *Exigent* be awarded upon a Judgment at the Suit of the party, ſuch *Superſedeas* is not allowable.

If a man be indicted before Juſtices of the Peace, and put in *Exigent*, he may find Sureties in the Chancery to appear at the day of the return of the Proceſs awarded by the Juſtices of Peace, and thereupon have a *Superſedeas* to the Sheriff not to arreſt him, and if he have arreſted him, to ſet him at liberty; and that Surety ſhall be body for body, *&c.*

If a man be put in the *Exigent* at the Suit of another in ſeveral perſonal Actions, he may find Sureties in Chancery,

ery body for body, to appear to every Action at the re-turn of the writs; and thereupon he ſhall have a *Superſedeas* of the Sheriff, reciting that he hath found Sureties in Chancery to appear at the days, *&c.* commanding him not to arreſt him, *&c.* And the forms of the writs of the *Superſedeas* are in divers manners.

I And if a man be indicted before Juſtices of Peace, and a *Capias* or *Exigent* be awarded thereupon, and afterwards the indictment is removed by *Certiorari*; the party out of the Chancery may ſue forth a *Superſedeas* to the Sheriff not to arreſt him, *&c.* becauſe the Indictment is removed by *Certiorari*, &c. or the Juſtices of Peace *ex officio* ought for to award a *Superſedeas* to the Sheriff after the *Certiorari* is come to them, to remove the Indictment, as it ſeemeth: *Tamen quære.* And in ſuch caſe he may have a *Superſedeas* out of the Chancery directed to the Sheriff, commanding him, that if the party will yield himſelf to the Sheriff, and find Sureties to appear at the day of the return of the writ, that then the Sheriff do not arreſt him, *&c.*

If a man ſueth a Knight of *St. Johns* of *Jeruſalem* and other by their proper names, and not by the name of Knight of St. *Johns*, &c. and he be ſued to the *Exigent*, the *Superſedeas* ſhall be purchaſed in the name of the Prior, and of the ſaid Knight his *Confrater*, in the Chancery, and there they may find Sureties to appear at the day; and thereupon they ſhall have a *Superſedeas* to the Sheriff, that he do not arreſt him, *&c.*

If a man be condemned in Debt or Treſpaſs by falſe Verdict, and a *Capias* be awarded to arreſt the party, now if the party ſueth an Attaint, he may come into the Chancery, and there find Sureties that he ſhall appear at the day, *&c.* and will anſwer the party, and ſatisfie the King and the party that belongeth to them, if the Attaint doth paſs againſt him; and upon the ſame he may have a *Superſedeas* to the Sheriff, that he do not arreſt him, and the form of the writ is ſuch:

G *Rex Vic'*, &c. *Monſtravit nobis* A. *quod cum* B. *nuper implactaſſet in Cur. noſtra coram Juſtic. noſtris nuper itinerant. in Com. prædict. præfat.* A. *& quoſdam alios de quadam tranſgr. eidem* B. *per præf.* A. *&c. illata, ut dicebat', de qua quidem tranſgr. idem* A. *per Inquiſition. (in quam ſe poſuit coram præfatis Juſticiariis) convictus fuit, per quod prædict.* A. *carceral. cuſtod. extitit mancipatus, in eadem moraturus quouſque nobis de eo quod ad nos pertinet in hac parte, & præf.* B. *de dampnis ſibi adjudicatis, fuerit ſatisfact. ac jam præf.* A. *arrainavit,*

per

per Breve noſtrum retornabile cor. nobis, &c. ubicunque, &c. quandam Juratam xxiiij. *Militum ad conveniend. Juratores, inquiſitionis prædict. & nobis ſupplicaverit, ut, pendent. Jurata prad. ſit coram nobis, ipſum A. à priſona qua ſic detinetur levari faciamus, ita quod eam proſequi poſſit ſecund. Legem, &c. Nos, volentes præf. A. in præmiſſ. &c. ſubvenire, & pro eo quod id A. invenit coram nobis in Cancellar. noſtra certos Manucaptores, viz. A. & B. de Com. tuo, qui manuceperunt, viz. quilibet eorum de ſatisfaciend. tam nobis de eo quod ad nos pertinet, quam præf. B. de dampnis, ut prædicitur, adjudicatis, ſi Jurata prædict. contra eum tranſierit, ſeu idem A. eum non fuerit proſecutus: Tibi præcipimus, quod ipſum A. à priſona prad. ſi ea occaſione, & non alia, detinetur in eadem, ſine dilatione deliberari fac. per Manucaptionem ſuprad. ita quod Juratam prad. proſequi poſſit, prout decet; & habeas coram præf. Juſtic. ad diem prad. hoc Breve. Teſte, &c.*

[238]

If a man be condemned in Treſpaſs, and the Plaintiff A prayeth an *Elegit*, and a *Capias* is awarded againſt the party for the King's Fine, the King may grant a *Superſedeas* directed to the Sheriff, that he do not arreſt the Defendant upon the *Capias*, becauſe that the Plaintiff hath made his election to have his Execution by *Elegit*.

And if in Treſpaſs the Defendant do agree with the Plaintiff pendant the ſuit, he ſhall have a *Superſedeas* to the Sheriff, that he do not execute the Proceſs ſued forth againſt him; but then it ſeemeth the ſame Agreement ought for to appear upon Record in the Court, *&c.* B

If a man be condemned in Treſpaſs, and the Defendant C doth bring an Attaint, and the Plaintiff ſued an Execution by *Elegit*, and a *Capias* is awarded againſt the Defendant for the King's Fine; the Defendant in Chancery may ſue a *Superſedeas* of the *Capias*, reciting in the writ how that the Defendant hath brought an Attaint, and that the Plaintiff hath ſued forth an *Elegit*, commanding the Sheriff to whom the *Superſedeas* is directed, that if the Defendant do yield himſelf to priſon, and there find Sureties to the Sheriff to ſatisfie the King for what doth belong to him, *&c.* that then he do deliver him out of priſon upon that Security, if he conceive the ſame to be ſufficient Security.

If a man ſueth a writ *de uxore abducta cum bonis viri*, D and a *Capias* or *Exigent* be awarded thereupon, the Defendant may find Sureties in the Chancery, body for body, to appear at the day; and upon, the ſame he ſhall have a *Superſedeas* to the Sheriff, to ſet him at liberty, if he have arreſted

arreſted him. And ſo upon an Appeal of Rape, if the Defendant in Chancery finds Sureties, body for body, to appear at the Return of the Writ, and to ſtand to the Law, he ſhall have a *Superſedeas* to the Sheriff to ſet him at liberty, &c.

And ſo if a Writ be granted out of the Chancery to attach one to find Sureties of Peace for a Menace to another, he may put in Security in Chancery by Surety to keep the Peace, and thereupon have a *Superſedeas* to the Sheriff, reciting the matter, commanding him to ſet him at liberty, if he have arreſted him.

If a man ſueth a *Supplicavit* out of the Chancery to arreſt a man to find Sureties of Peace, the Defendant who is arreſted may have a *Superſedeas* in Chancery to the Sheriff, commanding him not to arreſt him; and the Writ ſhall be ſuch:

Rex, &c. *ſalutem. Licèt nuper ad ſupplic.* M. *nobis ſuggerenti* I. *eidem* M. *de vita ſua ac mutilation. membrorum ſuorum graviter comminatum fuiſſe, tibi per breve noſtrum præceperimus, quòd ipſum* I. *coram te perſonaliter venire faceres, & ipſum ad ſufficient. Manucaptores inveniend', qui ipſum* I. *ſub certa pœna, ſibi per te rationabiliter imponend', pro qua reſpondere voluerit, manucap', quòd ipſe damnum vel malum aliquod eidem* M. *non inferret, ſeu inferri procuraret, compelleres, & quòd ſi hoc coram te facere recuſaret, tunc ipſum caperes, & in priſona noſtra de* N. *ſalvo cuſtodiri faceres, donec Securitatem invenerit in forma præd': quia tamen* R. *&* S. *&c. coram nobis in Cancell. noſtra perſonaliter comparentes manuceper. pro prædict'* I. *quod ipſe damnum vel malum aliquod eidem* M. *de corpore ſuo non inferret, nec inferri procurabit, videlicet, quilibet eorum ſub pœna* XX *l. quam conceſſer. de terris & catallis ſuis ad opus noſtrum levar', ſi idem* I. *damnum aliquod eidem* M. *de corpore ſuo intulerit, aut inferri procuraverit: Tibi præc', quòd execution. Brevis noſtri prædict. tibi in hac parte directi Superſ. per Manucaption. prædict'*, &c. *Teſte*, &c.

And if the Juſtices of Peace do award a Precept or a Warrant againſt a man to find Sureties for the Peace, he againſt whom the Warrant is may find Sureties in the Chancery for to keep the Peace, &c. and upon the ſame have a *Superſedeas* to the Juſtices of the Peace, that they do ſurceaſe, &c. to arreſt him, &c. and thereupon the Juſtices ought to ſurceaſe to make any Warrant againſt him afterwards; and if they have made any, that they ought to award a *Superſedeas* to the Sheriff, commanding him to ſurceaſe: and the Writ directed to the Juſtices of the Peace is ſuch:

Rex dilect. & fidel. ſuis, Juſtic. ſuis ad Pacem noſtram in Com. Berk. *conſervand. aſſign', ſalut', &c. Supplicavit nobis* W. *quòd cùm ipſe metuat ipſum ad proſequutionem* T. *per vos capi & arreſtari, ac graviter impriſonari, quouſque ſecuritatem invenerit, quòd idem* W. *damnum vel malum aliquod eid.* T. *de corpore ſuo non faciet, nec fieri procurabit, velimus Captioni & Arreſtationi prædict. per ſufficient. Manucaptores Superſedere jubere: Nos, pro eo quòd* R. S. P. *&* F. *de Com.* W. *in Cancell. noſtra perſonaliter conſtituti manuceperunt, pro ipſo* W. *quòd ipſe dampnum vel malum aliquod eid.* T. *de corpore ſuo non faciet, nec fieri procurabit, viz. quilibet. eor. ſub pœna centum librarum, quam conceſſerunt de terris & catallis ſuis ad opus noſtrum levari, in caſu quòd dampnum vel malum aliquod eid.* T. *de corpore ſuo per præfat.* W. *vel procuration. ſuam eveniat, ſupplicationi prædict. annuentes; Vobis mandamus, quòd Captioni & Arreſtationi corporis præd.* W. *eâ occaſione faciend. ſuperſed. omnino per Manucapt. ſupradict', &c. Teſte, &c.*

And if the Wife be in fear or doubt of her Husband, that F
he will beat her, or kill her, *&c.* ſhe may ſue a *Supplicavit* in
[239] Chancery againſt her Husband, to find Sureties that he do not beat her, nor evil-intreat her, and for to govern, rule, and chaſtiſe her reaſonably; and the Writ is ſuch:

Rex Vic', &c. Supplicavit nobis R. *ux.* I. B. *quòd cùm ipſa de vita ſua, &c. per præſ.* I. B. *graviter & manifeſtè comminata exiſtat, velimus pro ſecuritate ipſius* R. *in hac parte provideri; Nos, ſupplicationi prædict. annuentes, tibi præcipimus, firmit. injungentes, quòd ipſum* I. B. *coram te corporaliter venire fac', & ipſum ad ſuffic. Manucapt. inveniend', &c.* ut ſuprà, *quòd ipſe præfat.* R. *bene & honeſtè tractabit & gubernabit, & quòd ipſe dampnum vel malum aliquod eid.* R. *de corpore ſuo, alit. quam ad virum ſuum ex cauſ. regimin. & caſtigation. ux. ſuæ licitè & rationabilit. pertin', non faciet, nec fieri procurabit, quovis modo compellas. Et ſi hoc coram te, &c.*

And if a man in a Court-Baron in a Writ of Right, or in A
other Court, as in *London*, in a Writ of Right vouch a Foreigner to Warranty, *&c.* the Tenant who voucheth may ſue forth a *Superſedeas* directed to the Court, *&c.* commanding them that they do not proceed in the Plea, until the Warranty be determined, *&c. quod vide* in the Regiſter, *fol.* 5. 11, *&* 13. And upon the ſame he may have an *Alias*, and a *Pluries*, and an Attachment againſt the Bailies or Mayor of *London* and Sheriff, if they will not ſurceaſe, *&c.*

And if a man ſueth a Prohibition to the Spiritual Court B
and to the Parſon, and notwithſtanding the Spiritual Judge doth proceed to excommunicate the party, and upon Certificate

Certificate thereof in the Chancery a Writ of *Excommunicato capiendo* is awarded; he who ſued the Prohibition ſhall have a *Superſedeas* to the Sheriff, reciting the whole matter, commanding him that he do not arreſt the party; and if he have arreſted him, that he deliver him: *quod vide* in the Regiſter, *fol.* 67. And he may have a *Superſedeas* out of that Court out of which the Prohibition did iſſue, *&c.*

If the Collectors of the Subſidy or Tenths granted by the Clergy are excommenged by the Ordinary for their Contumacy, *&c.* and that be certified, and thereupon a Writ directed to the Sheriff for to arreſt them, if it be teſtified in the Chancery afterwards by the ſovereign of the Collectors that they have ſatisfied and ſubmitted themſelves; then upon that a *Superſedeas* ſhall be directed to ſurceaſe to arreſt them; and if he hath arreſted them, that he deliver them.

And if the Biſhop do certifie an Excommunication into the Chancery againſt one for a contempt in a Suit depending before him, and thereupon a Writ of *Excommunicato capiendo* be awarded; if the Official do by his Letters after certifie in Chancery, that the Defendant hath appealed to *Rome*, or elſewhere: now upon that Certificate he ſhall have a *Superſedeas* to the Sheriff, that he do not arreſt him pendant the Appeal; and if he have arreſted him, that then he do deliver him, *&c.*

And ſo if he who is excommunicate ſheweth in Chancery the Pope's Letters, teſtifying that he hath appealed, *&c.* he ſhall have a *Superſedeas* to the Sheriff, commanding him for to ſurceaſe, *&c.* and if he hath taken him by force of the Writ of *Excommunicato capiendo*, that then he do deliver him: *quod vide Regiſt. fol.* 68.

C If a man take one as his Villain, and the other ſueth a Writ *de homine replegiando*, and he claimeth him as his Villain; he who is taken may put in Sureties in Chancery, to yield himſelf and his Goods, if, *&c.* and thereupon he ſhall have a *Superſedeas* directed to him who took him, not to take him; and if he hath taken him, that then he do deliver him. *Regiſt.* 79, 80.

D If a man do hold Plea in the County of a Treſpaſs which is *Vi & armis*, &c. the Defendant may ſue out of the Chancery a *Superſedeas* unto the Sheriff or to the Bailies of the Hundred where the Plea is holden, reciting that a Plea of Treſpaſs *Vi & armis* ſhall not be holden in a leſs Court than before the King, or other Juſtices by his commandment. *Regiſt. fol.* 111.

And upon a Writ of Error brought of a Judgment given E
in *London* or other Court, the party ſhall have a *Superſedeas* directed to the Mayor and Sheriffs, or other Officer, to ſurceaſe to award Execution. *Regiſt. fol.* 129.

If a man be diſtrained by a Proceſs which iſſueth out of F
the Exchequer, as Executor to an Accomptant there, he may have a *Superſedeas* out of the Chancery directed to the Treaſurer and Barons of the Exchequer, ſurmiſing that he is not Executor nor Surety for the Accomptant, *&c.* commanding them that they do ſurceaſe, until they have enquired the truth thereof.

And the like Writ is given where the Barons do award G
Proceſs of Diſtreſs againſt any one who hath not any of the Lands of him who was the Accomptant, *&c.* but of his Purchaſe before he was Accomptant: *quod vi. Regiſt.* 144.

And if the Sheriff doth hold Plea of 40 *s.* the Defendant H
may ſue forth a *Superſedeas* that he do not proceed, *&c.* or after Judgment he may ſue a *Superſedeas* directed to the Sheriff, commanding him not to award Execution upon ſuch Judgment; and upon that an *Alias*, a *Pluries* and an Attachment. *Regiſt.* 145.

If a man for a debt of 10 *l.* ſue in the County by divers Plaints there, every Plaint under the ſum of 40 *s.* where the debt is one entire debt, the Defendant may ſue a *Superſedeas* to the Sheriff, commanding him not to hold Plea in thoſe Plaints.

If a man ſue one in the County before the Sheriff for breach of Covenants, to his damage of 10 *l.* or above the ſum of 40 *s.* then the Defendant may ſue a *Superſedeas* to the Sheriff that he do ſurceaſe; *quod vi. Regiſt.* 146.

[240]

And if a man do ſue forth an *Audita querela*, to avoid a A
Statute-Staple or a Statute-Merchant, he ſhall have a *Superſedeas* to the Sheriff, not to do Execution hanging the Plea, *&c. Regiſt.* 183.

Note that the Conſtable of *Dover*, who is Warden of the B
Cinque-Ports, cannot hold Plea of a thing which doth belong to be determined in the County, if it be not of a thing concerning the keeping of the Caſtle of *Dover*; and if he do, the party ſhall have a Writ directed unto him, to ſurceaſe, and upon the ſame an *Alias*, and a *Pluries*, and an Attachment; and the Writ ſhall be ſuch:

Rex dilecto & fideli ſuo B. *Conſtabulario Caſtri ſui* Dover', *& Cuſtodi Quinque Portuum ſuorum, vel ejus locum tenenti, ſalutem. Cùm inter cæteros Articulos quos Domin.* Ed. *quond. Rex* Angl', *avus noſter, ad emend. populi regni ſui conceſſ. ordinatum*

dinatum ſit, quod Conſtabularius Caſtri Dover *non implacitet ad Portam Caſtri prædict. aliquod Placit. ſorinſecum de Com', quod non tangit Cuſtodiam ejuſd. Caſtri; ac vos quodd. Placitum inter* W. *de* C. *&* P. *de quodam debito quod idem* W. *à præfat.* P. *exigit, & quod quidem Placit. Cuſtodiam Caſtri prad. non tangit, coram vobis ad Portam Caſtri illius teneatis, & ipſum* P. *eâ occaſione per varias diſtrictiones inquietatis minùs juſtè, contra tenorem Articulorum prædict', ſicut ex parte ipſius* P. *nobis datur intelligi: Nos, Articulos prad., inviolabiliter obſervari volentes, vobis mandamus, quòd ſi ità eſt, tunc de Placito illo cor. vobis ulteriùs tenendo Superſedeatis omnino, ipſumque* P. *contra tenorem eorund. Articulorum non moleſtetis in aliquo ſeu gravetis; & Diſtrictionem, ſi quam,* &c.

C And if the Conſtable doth hold Plea of any thing of which he ought not for to hold Plea, the party ſhall have his action upon the Statute, although he doth not ſue forth any Writ before directed to the Conſtable.

Writ de procedendo ad Judicium.

D NOte that by the Statute made *An.* 2 *E.* 3. *cap.* 8. it is enacted, that Commandment be not either by the great Seal nor the Petry Seal to delay common Right; but if ſuch Commandments come, *&c.* that the Juſtices ſhall not ſurceaſe to doe right in any point.

And by the Statute made *An.* 14 *E.* 3. *cap.* 14. the Juſtices ſhall not ſurceaſe for the great Seal or leſſer Seal.

And by that it appeareth, that the King's Juſtices ſhall proceed according to Law, notwithſtanding the King's Commands directed and delivered to them: and if the party thinketh in his Conſcience that ſuch Commandments ſhall be made, then he may ſue forth a Writ upon that Statute, commanding them to proceed, notwithſtanding ſuch Commandments, and the Writ ſhall be ſuch:

Rex dilectis & fidelibus ſuis, W. *&c. & ſociis ſuis Juſtic. ad Aſſiſ. in Com.* Salop. *aſſign', ſalutem. Cùm in Parliamento noſtro apud* Northampton *an. regni noſtri* 2. *convocato, per Nos, Prælatos, Comites, Barones, & alios Magnates, ac totam Communit. regni noſtri in eodem Parliamento exiſtentes, concord. fuerit & ſtatutum, quod non mandetur per Magnum Sigill. noſtrum, nec per parvum Sigillum noſtrum, ad Communem Legem impediend. ſeu prorogand', & ſi talia mandata veniant, quòd Juſtic. ea de cauſa ad Juſtic. fac. nullatenus ſuperſ. prout in Statut. prad. pleniùs continet': Vobis mandam', quòd ad Juſtic. partibus in Aſſiſ. Novæ diſſ, quam* T. *arrainavit coram vobis*

per Breve noſtr. verſus I. *&* A. *uxor. ejus, & alios in Brevi noſtro origin. contentos, de Ten'tis in* E. *faciend', virtute alicujus mandati de Magno Sigillo & Parvo Sigillo noſtro vobis directi ſeu dirigend', nullatenus Superſ. contra tenorem Statuti ſuprad'. Teſte,* &c.

But it ſeemeth to be in vain to ſue forth ſuch Writ, if the Juſtices do conſider their Oath, and their duty to God and the King: but becauſe ſome Juſtices are fearfull, and will not doe a thing which may turn to their diſpleaſure, that Writ was ordained, as it ſeemeth, and for no other cauſe, for the Statute was ſufficient in it ſelf: and the party may have in the end of the Writ theſe words, *viz.*

Sed ad Captionem ejuſdem Aſſiſæ, prout in Jure & ſecundum Legem & conſuetudinem regni noſtri Angl' *fuerint faciend'. proceed. Teſte,* &c.

And by the Statute of *Weſt.* 2. upon Iſſues joined in the Common Pleas or King's Bench, they ſhall be tried by *Niſi prius* before the ſame Juſtices in the Countrey. And by the Statute of Fines, in the time of Vacation thoſe Iſſues ſhall be tried before one of thoſe Juſtices, aſſociating to him a Knight *&c.* I

And by the Statute of *York*, a Juſtice of Aſſiſe, aſſociating to him an honeſt man ſhall take *Niſi prius*, and try the Iſſues ariſing thereupon taken in the Common Pleas or King's Bench, if they need not great Examination, *&c.* But in thoſe caſes it appeareth by the Regiſter, the King by his Writ may reſtrain and command the Juſtices, that they do not award *Niſi prius*; and if they have awarded any Writ of *Niſi prius*, that they ſend a *Superſedeas*; and the Writ ſhall be ſuch:

Rex Juſtic. ſuis de Banco ſalutem. Licet de communi conſilio regni noſtri concord. exiſtat & ſtatutum, quòd Inquiſitiones & Jurat. in Placito terræ capiend', quæ magnæ non ſunt examination', capiantur in patria coram uno Juſt. placei ubi mot. exiſtunt, ſociato ſibi aliquo probo homine patriæ, milit. ſive alio, ita quod communis dies det. in Banco, & certi dies & locus [241] *dentur in patria in præſent. part', & etiam quòd Inquiſitio & Jurat. in Placito terræ magnam examinac. requirrent. coram duobus Juſt. de Banco in form. prædict. capiantur: quia tamen Placitum quod eſt coram vobis in Banco prad. per Breve noſtrum int. W. Petentem & T. Tenent. de Maner. de S. cum pertin. in Com* W. *ſpecialit. nos tangit, præſertim cùm idem T. dictum Manerium teneat ad termin. vitæ ſuæ ex conceſſ. noſtra, & poſt mortem ejuſd.* T. *idem Manerium ad nos & hæred. noſtros integre reverti debet; volentes indempnitati noſtræ proſpicere in hac parte, Vobis mandamus, quòd ſi ad Inquiſic. inde capiend. procedere*

ederre vos contig', tunc hujuſmodi Inquiſic. coram nobis in Banco prad. & non alibi capiatis, concordia & Statuto prad. non obſtantibus: & ſi Inquiſic. inde per Breve de niſi prius capi demandaveritis, tunc Inquiſic. illi in patria capiend. ſuperſederi demandetis. Teſte, &c.

There is another form of writ for that matter in the Re-
A giſter. And *M.* 32 *H.* 6. it appeareth, that it is in the Juſtices diſcretion, whether they will grant *Niſi prius*, or not; and by the like reaſon, the King at his diſcretion, and by his writ directed to the Juſtices, may reſtrain the ſame.

And *Niſi prius* ſhall not be granted where the King is party; without the King's ſpecial warrant, or the King's Attorneys aſſent, notwithſtanding the foreſaid Statutes.

Writ upon the Statute made for the King's Steward and Marſhal, that they do not hold Plea, if not, &c.

B SEE by the Statute of *Articuli ſuper Chartas*, *cap.* 3. That the Steward and Marſhal ſhall not hold Plea of Freehold nor any Plea of Treſpaſs, but onely of Treſpaſs done in the King's houſe, and other Treſpaſſes done within the Verge, and of Contracts and Covenants which ſome of the King's Houſhold ought to have againſt another of his Houſhold, and no others; and no Plea of Treſpaſs ſhall proceed which is not brought before the King remove out of the Verge where the Treſpaſs ſhall be done, ſo that they be ended before the King go out of the bounds of the Verge where the Treſpaſs is done; and if they cannot be ended there, the parties ſhall ceaſe, and ſhall be tryed at the Common Law. And the Steward ſhall not take cogniſance of Debts of other men, but onely of ſuch as be of the King's Houſe: he ſhall hold none other Plea by Obligation made at the Diſtreſs of the Steward or Marſhal: and if they do contrary to that Ordinance, it ſhall be void. And the Court of the Marſhalſea nor the Juriſdiction thereof ſhall not exceed above twelve miles by the Statute made 13 *R.* 2. *c.* 3. And a man may add in an Action brought againſt him in the Court of the Steward or Marſhal, that he was not of the King's Houſhold at the time of the Treſpaſs or Contract made, or that the Plaintiff was not one of the King's Houſhold at that time. And if a man be ſued in the Court of the
C Steward and Marſhal contrary to the Statute, then he who is grieved ſhall have ſuch writ:

Rex Sen. & Mareſchallo Hoſpitii ſui, ſalutem. Cùm inter cæteros articulos quos Dominus Ed. *quond. Rex Angl', avus noſter, ad emendation. ſtatûs populi ſui conceſſit, ordinatum ſit, quod Sen. & Mareſchallus Hoſpitii noſtri non teneant Placita de Libero tenemento, de Debito, Conventione, Tranſgr', ſeu contractu hominum populi, niſi tantummodo de Tranſgr. Hoſpitii noſtri & aliis Tranſgr. infra virgam, & de Contractibus & Conventionibus qu. aliqui de eodem Hoſpitio aliis de eodem Hoſpitio fecerint, & in eodem Hoſpitio, & non alibi; ac jam ex querela* A. *&* B. *acceperimus, quod vos, ad profecutionem* I. *de* L. *Placitum inter præf.* A. *&* I. *qui de eodem Hoſpitio non ſunt, ut dicitur, de quod. Debito quod idem* A. *de præf.* I. *exigit, tenetis coram vobis, in ipſius* A. *damnum non modicum & gravam', & contra formam Ordinationis prædict': Nos igitur, volentes dictam Ordinationem in omnibus & ſingulis ſuis articulis obſervari, vobis mandamus, quod ſi ità eſt, tunc de Placito illo coram vobis ulteriùs tenendo ſuperſedeatis omnino, ipſum* A. *contra tenorem Ordinationis prædict. non moleſtantes in aliquo ſeu gravant'; & Diſtrictionem, ſi quam,* &c. *Teſte,* &c.

And if the Plea be lawfully begun before the Steward and Marſhal of the King's houſe within the Verge, and before the Plea be ended the King doth remove; now the Plea is thereby diſcontinued, and then it behoveth the party to commence his Action at the Common Law, and not within the Verge before the Steward and Marſhal; and if he do, the party grieved ſhall have ſuch Writ:

Rex Seneſch. & Mareſchal. Hoſpitii ſui, ſalutem. Cùm inter cæteros articulos quos Dominus Ed. *quond. Rex Angl', avus noſter, ad emendationem ſtatûs populi ſui conceſſit, ordinat. ſit, quod Seneſch. & Mareſch. Hoſpitii noſtri non teneant Placitum de Libero tenemento, de Debito, de Conventione, ſeu Contractu, hominum populi, niſi tantummodo de Tranſgr' Hoſpitii noſtri, & aliis Tranſgr. factis infra virgam, & de Contractibus & Conventionibus qu. aliquis de dicto Hoſpitio fecerit alteri de eodem Hoſpitio, & in eod. Hoſpitio, & non alibi, & nullum Placitum* [242] *de Tranſgr. placitent. aliud, quod non ſit attachiatum per eos antequam nos eximus virgam ubi Tranſgr. facta fuit, & Placit. ill. celeriter de die in diem placitent & terminent, ità quod placitent. & terminentur antequam exeamus eand. virgam ubi Tranſgr. facta fuit, & ſi fortè infra bondas illius virgæ terminari non poterint, ceſſent hujuſmodi Placita coram Seneſch. & Mareſch', & ſint Querentes ad Communem Legem; ac jam ex gravi querela* A. *&* B. *accepimus, quod vos ad ſectam* R. *de* B. *ipſos,* &c. *ad reſp. coram vobis prædict.* R. *de quad. Tranſgr. eid.* B. *per præfat.* A. *&* B. *infra virgam noſtram apud* E. *an',* &c. 12.

facta,

falſa, ut dicitur, quod quid. Placitum per vos attachiatum non fuit antequam virgam ill. exivimus, diſtringitis, & ipſos ea occaſione multiplicit. inquietatis minus juſte, in ipſor. A. & B. diſpendium non modicum & gravamen, & contra tenorem articulorum prædict. Nos igitur, volentes dictam Ordination. in omnibus & ſingulis ſuis articul. inviolabilit. obſervari, Vobis mandam', quod ſi ita eſt, tunc ipſos A. & B. ad reſp. coram vobis de hujuſmodi Tranſgr', nullatenus diſtringatis, ſed de Placito illo coram vobis ulterius tenend. omnino Superſ. & Diſtrictionem, ſi quam, &c. *Teſte,* &c.

A And if a man be ſued by Plaint before the Steward and Mareſchal of the King's houſe, who is not of the King's houſhold, and the Debtor plead, and affirmeth the Juriſdiction of the Court; and the Cauſe be adjudged againſt him; yet he ſhall have an action upon the Statute againſt the party who ſueth him there; *quod vide T.* 3 *H.* 3. title *Eſtoppel.*

Writ of Certiorari *to remove Records,* &c.

B THE Writs of *Certiorari* for to remove Records out of one Court into another are of ſeveral forms; and the form of the Writ to remove the Record of Re-diſſeiſin is ſuch:

Rex Vic', &c. *Quia quibuſlibet certis de cauſis certior. velimus ſuper Recordo & Proceſſu cujuſdam Inquiſition. facta coram te & cuſtodibus Placitorum Coron. noſtræ in Comit. tuo apud* N. *per Breve noſtrum ſuper quadam Rediſſ.* I. *per* R. *fact. ut dicitur, de uno meſuag. cum pertin. in* N. *Tibi præcipimus, quod ſi judicium inde redditum ſit, tunc Recordum & Proceſſum præd. cum omnibus ea tangentibus nobis ſub ſigillo tuo diſtincte & aperte mittas, & hoc Breve, ita quod,* &c. *ubicunque,* &c. *ut inſpectis Rec. & Proceſſu præd. ulterius inde fieri fac. quod de jure & ſecundum Legem & conſuetudinem regni noſtri* Angl. *fuer. faciend. Teſte,* &c.

And he may remove it after a Diſſeiſin, &c.

And if a man be attainted in a *Rediſſeiſin* or a *Poſtdiſſeiſin*, and hath no Lands within the County to be put in Execution, he may remove that Record by a *Certiorari* into the K. Bench, and there have Execution. And he may remove a Recovery in an Aſſiſe of *Novil diſſeiſin* into the K. Bench by C a *Certiorari* in like manner. But the Writ of *Certiorari*

See a Recovery in ancient Demeſn, 39 H. 6. 7 & 4.

But ſee 44 E. 3. 28. 36 H. 8. *Br. Certiorari* 20 there is no ſuch Writ of *Certiorari* to remove the Record in *Com. B.* immediately, but firſt in the Chancery. Yet 43 *Aſſ.* 20. the contrary is admitted.

faith,

ſaith, *Si judicium inde redditum ſit, tunc Record', Proceſſ.* &c. as above. By which it appeareth, that it ought that the judgment be given in the Aſſiſe, &c. otherwiſe it ſeemeth he ſhall not have the writ; for the *Certiorari* is ſaid to remove the Record, to the intent he may ſue forth Execution upon the ſame when it is removed in the K. Bench, for there they may award Execution into every County to execute the ſame.

21 Ed. 3. 5. Br. Cert. Action 5. If a man do recover Lands by Aſſiſe of *Novel diſſeiſ.* and the Defendant will ſue a Certificate before other Juſtices, there he ought to ſue forth a *Certiorari* to the Juſtices of Aſſize to certifie the Record unto the new Juſtices who hold Plea upon the Certificate, and that word (*Sine dilatione*) ſhall not be put in any writ which hath a certain day of return.

And if a man recover *per Aſſize*, and the Defendant will ſue an Attaint before other Juſtices, then he ought for to have a *Certiorari* to the Juſtices of Aſſiſe to certifie the Record, *Si judicium redditum ſit.*

And if a man recover before Juſtices in Eyre in an Aſſize of *Novel diſſeiſ.* the other party may ſue forth an Attaint before other Juſtices, and have *Certiorari* to the Juſtices in Eyre to ſend the Records before other Juſtices.

37 H. 6. 16. And the King may ſend his writ of *Certiorari* to the Barons, Treaſurer, and Chamberlains of the Exchequer, to certifie the Record of Aſſiſe in the Treaſury in their cuſtody into the King's Bench.

There is another writ of *Certiorari* to the Treaſurer and Chamberlains of the Exchequer, to certifie the Record of the Aſſize taken, but the judgment was not given, becauſe the Defend. died: but the writ is of little effect, for that by the death of the Def. before judgment the writ is abated.

9 E. 4. 50. Cbec. 24 E 3. 24. 15 E. 4. 5. 8 E 4. 25, 26. And if a man will ſue an Attaint upon Recovery in an Aſſiſe, which Record of Aſſiſe is in the Treaſury, then he who bringeth the Attaint ought to ſue a *Certiorari* to the Treaſurer and Chamberlains of the Exchequer, to certifie the Record of Aſſize before the Juſtices before the Attaint be ſued forth.

If a man do recover damage in an Aſſiſe of *Novel diſſeiſ.* and before he hath Execution of the damages the Record is ſent into the Treaſury; then he may ſue a *Certiorari* to the Treaſurer and Chamberlains, to certifie the Record of Recovery in the Aſſiſe before the King, that Execution may be awarded for the damages.

[243]

And if a man recover lands and damages in an Aſſize of *Freſh force*, and the Defendant hath not any thing within the

the City or Borough for to ſatisfie the damages; then the party may ſue a *Certiorari* to the Mayor or Bailies, to certifie the Record into the King's Bench, that he may have Execution of the damages recovered.

C If the King maketh certain perſons Juſtices of Aſſize, *&c.* in one County, and afterwards at another Aſſiſes he maketh other Juſtices of the ſame County; a general *Certiorari* ſhall be ſued to the firſt Juſtices, to certifie all the Records of Aſſize and Juries which were taken in that County before the new Juſtices.

D And in Aſſize of *Novel diſſeiſ.* if the Verdict paſs for the Plaintiff, and before judgment be given a new Commiſſion is to other Juſtices of the ſame County, the party for whom the Verdict paſſed may ſue forth a *Certiorari* to the firſt Juſtices, to remove the Record into the King's Bench, to have judgment given there upon that Aſſize and Verdict paſt; or may have a *Certiorari* to the firſt Juſtices, to ſend the Record before the new Juſtices, that they may give judgment thereupon: and it behoveth to have another writ unto the new Juſtices, to receive the Record, and that they proceed to judgment. And when the Record is removed after Verdict given, before other Juſtices, and they delay to proceed to judgment upon the Verdict, the party for whom the judgment ſhould be given may ſue forth a writ directed to them *quod receptis & viſis Record. & Proceſſ. prædict.* they proceed to judgment, *&c.* And thereupon the party may have an *Alias*, and a *Pluries*, *Vel cauſam nobis ſignifices*: and if they will not do any thing, whether he ſhall have an Attachment is a Queſtion; for there is a Statute made *A.* 3. *E.* 3. which willeth, that Commiſſioners in ſpecial caſe limited by the Statute ſhall be puniſhed for their miſdoings, but it ſeemeth it ſhall not be if the Statute be not made for that cauſe onely.

E And *An.* 27 *E.* 3. in Aſſiſe, a Juſtice was indicted, for that he cauſed an Indictment, which was found to be but Treſpaſs to be entred in Record as Felony, *&c.* And the ſame was adjudged a void Indictment, becauſe it was to make void a Record. But yet it ſeemeth he might be indicted, for taking of money, or for other falſity, which doth not deſtroy and defeat the Record. *Quære.*

F And a man may have a Writ to the ſame Juſtices before whom the Verdict paſſed, *&c.* to proceed to Judgment, as well as he ſhall have a writ to other Juſtices before whom the Record is removed.

G If a man in an Aſſiſe of *Novel diſſeiſin*, or other Action real, before Juſtices in Eyre vouch one to warranty, who

who preſently entreth into Warranty, and afterwards loſeth; the Plaintiff ſhall recover, and the Tenant ſhall have Judgment to recover in value againſt the Voucher: now if he who recovered in value will have Execution of the Lands recovered in value, he ought to ſue a *Certiorari* to the Treaſur. and Chamberlains of the Exchequer, to certifie the Record in the Aſſiſe into the Chancery; and when it is there certified, the King ſhall ſend the Record by *Mittimus* into the Common Pleas, and thereupon the Juſtices ſhall award a *Scire facias* againſt the party againſt whom the Recovery was, to come and ſhew why Execution ſhould not be done of Lands in value.

And a man may ſue a *Certiorari* directed to the Juſtices of Aſſiſe, to remove the Records of Aſſiſe into the Chancery, and alſo a Deed which is before them, *&c.* and afterwards he may ſue forth a writ of *Mittimus* unto the new Juſtices of Aſſiſe of thoſe Records, and of the Deed which remained before the other Juſtices.

And if the Husband and wife ſue a Bond which is made to the wife in the Common Pleas, and the Deed is there denied, for that they remain in the keeping of *Cuſtos Brevium*, and the Husband dieth; the wife may have a writ out of the Chancery directed to the *Cuſtos Brevium* in the Common Pleas, that he deliver the Deed to the wife, becauſe the Plea is determined by the death of the Husband.

And when the Juſtices in Eyre come, and ſhall be in any County by the King's Commiſſion, then a writ ſhall be ſent to the Juſtices of the Common Pleas, to adjourn all the Pleas of that County which are in the Common Pleas before the Juſtices in Eyre, to be determined before them: and if the Juſtices in Eyre cannot determine the Pleas before they depart out of the County, then a writ ſhall be ſent to the Juſtices in Eyre, to ſend thoſe Records and Pleas which are not determined nor adjudged into the Common Pleas again. And the writ ſhall be ſuch:

Rex dilecto & fideli ſuo S. ſalut. Cum Loquela quæ fuit cor. Juſt. noſtris de Banco per Breve noſtrum int. S. Petent. & I. Tenent', de uno meſuag. cum pertin. in T. in Com. N. una cum Brevi prædict', cor. vobis & ſociis veſtris nuper Juſt. noſtris itinerant. in Com. prædict. miſſa fuiſſet placitanda, ac Placitum illud quibuſd. cert. de cauſ. in itinere prad. remanſerit indiſcuſſum, abſq; hoc quod id. Placit. alicubi adjornat. fuiſſet placitand', per quod ex parte ipſius S. nobis eſt ſupplicat', ut ſibi in præmiſſ. Juſtic. facere velimus; Nos ea de cauſa attendentes expediens fore, quod Juſt. noſtri de Banco ſuper Record. & Proceſſu Loquela

Loquela prædict' cor. vobis & præfat. ſociis veſtris in itinere prad. certiorent', vobis mandam', quod Record. & Proceſſ. prad. una cum Brevi prad. & omnibus aliis ea tangentib', præf. Juſt. noſtris de Banco ſub ſigillo veſtro diſtincte & aperte ſine dilatione mittatis, & hoc Breve, ut his inſpectis, ulter. proced. in Loquela prad. ſecund. Legem. & conſ. regni noſtri valeant. Teſte, &c. [244]

A And if an Aſſiſe of *Novel diſſeiſin* be brought in the King's Bench, and the Def. alledge and plead, that there is a writ of a higher nature depending in the Common Pleas for the ſame Land between the Plaint. and Def. then if they be at iſſue, whether there be ſuch a writ depending or not, the Def. ought to ſue a *Certiorari* out of the Chancery to the Juſtices of the Common Pleas, to remove and certifie the Records into the Chancery; and upon the ſame certified, he ſhall have a writ of *Mittimus* out of the Chancery to the Juſtices of the King's Bench; with which writ the King ſhall ſend the tenor of the Record which is there into the King's Bench. And the writ of *Mittimus* ſhall be ſuch: Br. Brief 414. Vid. 22 H. 6. 15. 23 *Aſſ.* 14. Br. Brief 282. 40 E. 3. 32. Br. Brief 304.

Rex dilecto & fideli ſuo R. *de* W. *& ſociis ſuis Juſt. ad Placita coram nobis tenenda aſſign. ſalut. Cum* R. P. *nuper arrainavit quandam Aſſiſam nova diſſ. cor. nobis. apud* Weſt. *per Breve noſtrum verſus* B. *de ten'tis in* A. *& duo meſuag', tres carucatas terra, viginti acras prati, cum pertin. in eadem Villa in viſu poſuiſſ. idemq;* H. *placitand. in Aſſiſa illa allegaſſet, quod Breve de altiori natura tunc & diu ante pendebat inter partes prædict. coram dilectis & fidelibus noſtris* W. *& ſociis ſuis Juſticiariis noſtris de Banco, & Record. & Proceſſ. inde coram præfat. Juſt. noſtris de Banco habita ad warrantum vocaſſet, ut accepim. Nos attendent. expediens eſſe & neceſſe, quod vos ſuper tenor. Record. & Proceſſ. prædict. coram præfat. Juſt. de Banco habit. certioremini, tenorem illum quem coram nobis in Cancell. noſtra venire fecimus vobis mittemus ſub pede ſigilli, mandant', quod inſpectis Record. & Proceſſu prad. ulterius fieri fac. quod de jure & ſecundum Legem & conſ. regni noſtri fuerit faciend. Teſte, &c.*

B And if a man do recover in an Aſſiſe of *Novel diſſeiſin* before Juſtices of Aſſiſe in the County, and before Execution ſued of the damages the Record is removed into the Chancery by *Certiorari*; he who recovered in the Aſſiſe may ſue forth a writ of *Mittimus* to ſend the Record into the King's Bench, commanding them for to proceed, and to award Execution. And the writ is ſuch:

Rex

Rex dilectis & fidel. E. & ſociis ſuis Juſtic. noſtris ad Placita coram nobis tenend. aſſign. ſalutem. Cum I. per Recogn. Aſſ. de nov. diſſ. quam W. arrain. coram B. & ſociis ſuis nuper Juſt. Domini Ed. quondam Regis Angl. avi noſtri, ad Aſſ. &c. aſſign. verſus R. & alios, &c. de Tenementis in T. recuperaſſet ſeiſinam ſuam de uno meſ. cum pertin. in D. per conſider. cur. pradict. & dampna ſua, quæ ad x li. taxabantur, ſicut per Record. & Proceſſ. Aſſ. prad. quæ coram nobis certis de cauſis venire fecimus, plenius apparet; ac Executio Judicii quoad dampna recuperanda adhuc reſtatfaciend', ſicut ex parte ipſius I. nobis dat. intelligi: Nos igitur, volent. dictum Judic. execut. debite demandari, Record. & Proceſſ. prad. vobis mittim. ſub pede ſigill. noſtri, mandantes, quod viſ. Record. & Proceſſ. prad. alter. quoad exec. Judic. pradict. fieri faciatis quod jure & ſecundum Legem & conſ. regni noſtri fuerit faciend. Teſte, &c.

And if a man recover Lands by Aſſiſe of *Novel diſſeiſin* before Juſtices of Aſſiſe, and the Defendant hath a writ of *Warrantia Charta* depending in the Common Pleas, the party may ſue a *Certiorari* to remove the Record of the Aſſiſe in Chancery, and thereupon have a *Mittimus* of the Record of Aſſiſe to the Juſtices of the Common Pleas, and in the end of the writ ſhall be ſaid, *ut hiis inſpectis, ſecurius procedere valeant in Placito Warrantia pradict. ſecund. Legem*, &c.

And in Aſſiſe of *Novel diſſeiſin*, if the Defendant plead two or three Recoveries in Aſſiſe before other Juſtices, which Record is in the Treaſury, *&c.* now if the Record be denied, for which he ſueth a *Certiorari* to the Treaſurer and Chamberlains of the Exchequer, to certifie the Records at a certain day into the Chancery; if they at the day certify any Records, but do not certifie that there are other Rolls of the ſame Juſtices remaining in the Treaſury in the Tower of *London*, ſo as that they have not made a full ſearch of the Records; then the King ſhall ſend to the Juſtices of Aſſiſe his writ, reciting the matter, commanding them for to continue that Aſſiſe until another day, ſo as the Defendant be not damnified by failing of the Rec. And the ſame ſeemeth to be reaſonable.

And if a man be bound in a Statute Staple to pay a certain ſum of money at a day certain, after the day the party who hath the Statute may come to the Mayor of the Staple and ſhew him the ſame, and pray him to certifie the ſame into the Chancery; and if the Mayor will not ſo do, then the party who hath the Obligation may come into the Chancery, and ſhew the ſame there, and pray a *Certiorari* to the

the Mayor to certifie the Inrolment of the Statute: and if the Mayor do return, that he hath twice, or oftner, certified the ſame before that time, as appeareth by the Inrolment made by the Mayor, if there appear no ſuch Certificate upon Record in the Chancery, then he who hath the Bond of the Statute may ſue forth a new *Certiorari* to the Mayor, reciting [245]
in the writ, that there is not any Certificate recorded in the Chancery, commanding him to certifie the Inrolment of the Statute which is before him; and upon the ſame he may have an *Alias* and a *Pluries* againſt the Mayor, if he will not certifie the ſame, and alſo an Attachment againſt the Mayor, directed to the Sheriff, *&c.*

A The writ of *Certiorari* is an Original writ, and iſſueth ſometimes out of the Chancery, and ſometimes out of the King's Bench, and lieth where the King would be certified of any Record which is in the Treaſury, or in the Common Pleas, or in any other Court of Record, or before the Sheriff and Coroners, or of a Record before Commiſſioners, or before the Eſcheator; then the King may ſend that writ to any of the ſaid Courts or Offices, to certifie ſuch Record before him in *Banco*, or in the Chancery, or before other Juſtices, where the King pleaſeth to have the ſame certified: and he or they to whom or who the *Certiorari* is directed, ought to ſend the ſame Record according to the tenor of the writ, and as the writ doth command him; and if he or they fail ſo to do, then an *Alias* ſhall be awarded, and afterwards a *Pluries*, *Vel cauſam nobis ſignifices*, and after an Attachment, if a good cauſe be not returned upon the *Pluries* wherefore they do not ſend the Record.

Vid. 10 El. Dyer 274. 275.

But ſee *Lambert* 411. The uſe at this day is, to award a *Subpœna* to the Commiſſ. 37 H. 6. 3a. *Marle.*

B Alſo the King might by ſuch writ of *Certiorari* ſend for the tenor of the Record, or for the tenor of the tenor of the Record, at his election; and thoſe writs ought for to be obeyed, and the Records ſent, as the writ commandeth them to do; and the form of ſome of thoſe writs here followeth:

Rex dilecto & fideli ſuo R. *ſalut. Quia quibuſdam certis de cauſis certiorari volumus ſuper Record. & Proceſſ. utlag. in* I. *Com.* T. *promulgat. & coram vobis & ſociis veſtris Juſt. noſtris ad diverſ. Felonias in Com. prad. audiend. & termin. aſſign. returnat': Vobis mand', quod tenor. Record. & Proceſſ. prad.* or thus, *tenor. Record. & Proceſſ. Utl. prad. cum omnibus ea tangent., nobis in Canc. veſtra ſub ſigillo veſtro diſtincte & aperte ſine dilatione mittatis, & hoc Breve. Teſte,* &c.

And

And to certifie an Indictment taken before the Juſtices in C Eyre, the form is ſuch:

Rex, &c. *Quia ſuper Præſentation. factam coram nobis & ſociis veſtris Juſtic. noſtris itinerant. in Com.* Lincoln. *de morte A. unde* B. *captus & detentus in priſona noſtra de* N. *reſtatus eſt, & etiam ſuper Inquiſition. inde coram vobis ibid. fact. quibuſdam certis de cauſis volumus certiorari; Vobis mandamus, quod irrotulationem Præſentat. & Inquiſitionis prad. nobis ſub ſigillo veſtro diſtincte & aperte ſine dilatione mittatis, & hoc Breve. Teſte*, &c.

And there is another form of writ directed to the Co- D roners:

24 *Aſſ.* 40. *Br. Certiorari* 9. the writ was awarded to the Executors of the Coroner.

Rex Coronator. ſuis in Com. Lincoln. *ſalut. Quia quibuſdam certis de cauſis certiorari volumus ſuper Records & Proceſſu cujuſdam Appell', quam* W. *nuper Probator. defunct. fecit verſus* S. *de quadam Roberia quam id.* W. *&* B. *in Com', &c. ad invicem feciſſe dicebantur: Vobis præcipimus, quod Record. & Proceſſ. ejuſd. Appell. cum omnibus ea tangentibus', nobis ſub ſigillis veſtris*, &c. And that writ lieth where a man before Juſtices becometh an Approver, and the Coroner appointeth him to make his Approvement, and afterwards the Approver dieth; the King may write unto the Coroner to ſend him the Record of the Appovement.

Vid. 36 H. 6. 24. for *Certiorari* to the Coroners. *Vid.* 2. Eliz. *Dyer* 223. *Proctor's* Caſe.

And another form of *Certiorari* to the Mayor and Sheriffs E of *London*.

Rex Mayor. & Vic. Lond. *ſalut. Quia quædam negotia per Appell. Indictamenta & Attachiament. coram vobis in Civitate prad.* Lond. *nuper intrata nondum terminat', & quædam Inquiſitiones in eadem Civitate facta fuerint retornat', quarum quidem negotiorum Inquiſitiones, Record. & Proceſſ. penes vos reſident, ut dicitur, & qua omnia per dilectos & fideles noſtros* B. C. *&* D. *Juſtic. noſtros ad diverſas tranſgr. in Civitate prad. fact. audiend. & terminand. aſſign', expediri volumus, & finalit. terminari: Vobis mandamus, quod prad. Record. & Proceſſ. cum omnibus ea tangent. præf. Juſtic. ſub ſigillis*, &c.

And if the King by virtue of any writ of *Certiorari* re- F move any Record before any of the Juſtices, he may afterwards ſend for that Record, and remove the ſame before himſelf, or other Juſtices, at his election; and then the writ is ſuch:

Rex, &c. *Quia quibuſdam certis de cauſis certiorari volumus ſuper Record. & Proceſſ. cujuſdam Inquiſitionis capt. coram dilectis & fidelibus noſtris* W. *&* P. *Juſtic. noſtris ad gaolam noſtram de* N. *aſſign. deliberand', pro morte* E. *unde* C. *pro morte prædict. reſtatus fuit, ut dic. qua quidem Record. & Proceſſ. coram*

coram vobis certis de cauſis venire fecimus, quæ penes vos reſident, ut dic': Vobis mandamus, quòd Record. & Proceſſ. prad. cum omnibus ea tangent. nobis ſub ſigillis veſtris diſtinctè, &c.

G And when the King would be certified of an Outlawry in the County, then the *Certiorari* ſhall be as well to the Sheriff as to the Coroners of the County to certifie the ſame. But if a man be condemned in the King's Bench, and afterwards outlawed for the King's Fine upon his condemnation; if he will ſue forth a Pardon of the Outlawry, he ought to have a *Certiorari* out of the Chancery, to certifie the Record of the condemnation, which ſhall be ſuch:

Rex dilecto & fideli ſuo I. &c. Capitali Juſtic. ſuo, ſalut'. Cùm E. de quadam tranſgr. F. vi & armis facta coram nobis convictus, & pro eo quòd non venit coram nobis ad ſatisfaciend. nobis de redemptione ſua quæ ad nos pertinet in hac parte, & præfat. F. de dampnis ſibi in hac parte adjudicat, in Exigend. poſit. fuiſſet ad utlagand', & eâ occaſione poſtmodum utlagat', quæ quidem utl. coram nobis jam eſt retornata, ut accepimus, ac idem E. nobis ſupplicaverit, ut cùm ipſe præf. F. de dampnis ſuis prad. jam ſatisfecerit, velimus ei Utlag. prad. gratioſè pardonar': Nos ea de cauſa certior. volentes ſuper Record. & Proceſſ. Utlag. prad', & ſi idem E. præfato F. de dampnis prad. ſatisfecerit (ut dicitur eſt) necne, Vobis mandamus, quòd nos ſuper premiſſ. ſub ſigillo veſtro diſtinctè & apertè, &c. reddatis certiores. [246]

A And if a man be indicted before Juſtices of Gaol-delivery of Felony, and afterwards is acquitted; then if he who is acquitted doubteth he ſhall be troubled by reaſon of the ſame Indictment, he may ſue forth a *Certiorari* to remove that Record and Proceſs of the Inquiſition, *&c.* into the Chancery, *&c.*

B And if a man do recover Debt or Damages before Juſtices of *Oyer* and *Terminer*, and hath not Execution, he may remove the Record and the Proceſs into the King's Bench, and there ſue Execution, and have a *Scire facias* upon that Record, *&c.* 14 H. 7. 15. 15 H. 7. 5. 36 H. 6. 23. 39 H. 6. 34.

And if a man do recover Damages in an Action of Treſpaſs before Juſtices of *Oyer* and *Terminer*, and hath the party in Execution by reaſon of the Judgment; if the party in Execution dieth in priſon, he who recovered may ſue a *Certiorari* to the Juſtices to remove the Record into the King's Bench, that the Juſtices there may award Execution as the Law requireth in ſuch caſe. And, I think, in that caſe, that the party ſhall have Execution by *Elegit*, or by *Scire facias*; for it ſeemeth not to be reaſonable, that the 34 H. 6. 47. *contra.* 4 E. 4. 39. 33 H. 6. 48. *Danby.* 47 E. 3. *Execut.* 47.

death of him who dieth in prison should be a satisfaction to the party. *Tamen quære*, for the same is a doubt.

If a man be arraigned of Murther, and found guilty *ſ defendendo*, for which he is bailed, or committed to prison, he may have a *Certiorari* to remove the Record into the Chancery, that he may sue forth a pardon thereupon according to the course of the Law, *&c.* C

If a man recover damages in Trespass in the King's Bench, and hath the Defendant's Lands in Execution by *Elegit*, and then he who recovereth is disseised by the other, for which he bringeth an Assise before the Justices of Assise; he who bringeth the Assise ought to have a *Certiorari* to the Chief Justice of the King's Bench, to certifie the Record and the proceedings to judgment given in the King's Bench, and of the Execution there; and the Plaintiff may have the Record in Chancery exemplified under the Great Seal, if need be, to the Justices of Assise. D

And if a man recover by Assise of *Novel disseisin*, and the party will sue an Attaint in the Common Pleas, or in the King's Bench, he ought to sue a *Certiorari* to the Justices of Assise, to remove the Record into the King's Bench, or into the Chancery, *&c.* that he might send the same before the Justices before whom the Attaint is sued, *&c.* E

And it appeareth by the Register in the Title [*Certiorari*] that if False Judgment be given before the Steward and Marshal of the King's House, upon a Plaint there sued, that the party may sue an Attaint by Writ before the Steward and Marshal to attaint that Jury, *&c.* and that the King may send a *Certiorari* to certifie the Record into the Chancery, which shall be directed to the Steward and Marshal of the King's house; but the Record shall be certified under the Seal of the Steward onely, as appeareth by the words of the Writ, *&c.* F

There is another Writ of *Certiorari* directed to the Treasurer and Barons of the Exchequer, to certifie the King of the debt which *I.* oweth unto him, and of the debt which the Ancestor of the said *I.* owed the King, and which are clear debts, and to certifie the same without delay under the Exchequer Seal, and not into the Chancery, nor into the King's Bench. G

There is another *Certiorari* directed to the Justices of Gaol-delivery, to certifie the Record and Proceedings upon an Indictment of Murther, and Acquital thereupon into the Chancery, *&c.* H

There is another *Certiorari* to the Justices of Peace, to I certifie

certifie into the Chancery the tenor of the Records and Proceſs of Outlawry of ſeveral perſons returned before them.

K There is another Writ of *Certiorari* directed to the Steward and Marſhal of the King's houſe, to certifie under the Seal of the Steward into the King's Bench an Indictment taken before the Steward and Marſhal, which the King would have to be determined onely before him in the King's Bench.

L There is another Writ of *Certiorari* to the Mayor and Sheriffs of *York*, to certifie the tenor of the Record and Proceedings in an Aſſiſe of *Freſh force* ſued before them in the ſame City without Writ, and to certifie the tenor of the Record and Proceedings in the Chancery.

M There is another Writ of *Certiorari* to the Biſhop of *Oxford*, to certifie into the Chancery how many perſons were admitted, inſtituted and inducted into ſuch a Church, ſince the firſt year of King *E.* 4. until this time, and at whoſe Preſentation, and by what Title, and in what manner.

N There is another Writ of *Certiorari* to the *Cuſtos brevium*, to certifie the King in the Chancery the tenor of the original and judicial Writs, and the Warrants of Attorney which are in his cuſtody concerning ſuch an Action or Suit.

O And another Writ directed to the Treaſurer and Chamberlains of the Exchequer, to certifie the King in the Chancery the Record and Proceedings of a Writ of *Quo warranto* ſued by the King's Anceſtor, King *Edward* the firſt againſt the Abbat of *Weſtminſter*, for certain Liberties claimed by the ſaid Abbat, *&c.* [247]

A And another Writ of *Certiorari* to the Commiſſioners of Sewers, to certifie the King in the Chancery at a certain day all the Preſentments before them made againſt ſuch a perſon, *&c.*

B And a Writ of *Certiorari* directed to the Chief Juſtice of the Common Pleas, to certifie the tenor of a Record and proceedings of Uſlagary againſt ſuch a one in *London*, remaining in *Middleſex* before the Juſtices of the Common Pleas, and to certifie the ſame into the Chancery.

C And if a Baron, who is a Peer of the Realm, be ſued in the Common Pleas, and Proceſs be awarded againſt him by *Capias* or *Exigent*, then he may ſue a *Certiorari* in the Chancery, directed to the Juſtices of the Common Pleas or King's Bench, teſtifying that he is a Peer of the Realm, commanding them to award ſuch Proceſs againſt him as

they ought to doe againſt a Peer of the Realm: and the Writ is ſuch:

Rex Juſticiar. ſuis de Banco ſalutem. Mandamus vobis, quod ſi G. T. *mil. coram vobis ad ſectam alicujus per Actionem perſonalem implacitatus exiſtat, talem Proceſſum, & non alium, verſ. ipſum in Actionem prædict. fieri faciat', qual. verſus Dominos, Magnates, Comites, ſeu Barones regni noſtri* Angl', *qui ad Parliamenta noſtra de ſummonitione venire debent, aut eorum aliquem, ſecundum Legem & conſ. regni noſtri* Angl. *fuer. faciend', quia prad.* G. T. *unum Baron. regni noſtri prad. ad Parliamenta noſtra de ſumm. Regia venient, record': & hoc vobis mandam', & aliis quor. intereſt innoteſcimus. Teſte,* &c.

And if a man recover damages and coſts in an Aſſiſe of *Novel diſſeiſin*, he may ſue a *Certiorari* to remove the Record into the Chancery, directed to the Juſtices of the Aſſiſe, to the intent that the King may ſend the ſame to any of his Courts, that he who recovereth may ſue Execution of the damages recovered; and upon that Record ſent into the King's Bench, he ſhall ſend that Record into the Common Pleas by Writ of *Mittimus* directed to the Juſtices there, that they doe as they ought for to doe according to the Law, to make the damages to be levied.

There is another form of *Certiorari* by theſe words:

Rex Vic', &c. *Volentes certis de cauſis certior. ſuper tenorem Record. & Proceſſ. Utlag. in* W. *de* B. *de Com.* N. *Husbandman, in eodem Com',* or thus, *in Huſtingo noſtro* London. *promulgat', & coram Juſticiar. ipſius Regis de Banco ret', quod quidem Record. & Proceſſum idem Rex coram eo cert. de cauſis venire fecit, ut dic', ac ſi idem* W. *ſe redd. priſona Marſchalcia ipſius Regis cor. eo occaſione prædict', necne: Ideo tenor Record. & Proceſſ. Utlagar. prædict', necnon Certificatio redditionis illius eidem Regi in Cancell. ſuam, ſub ſigillis* I. F. *capital. Juſtic. ſui ad Placita coram ipſo Rege tenend', diſtinctè & aperte ſine dilatione mittantur cum hac Billa. Teſte ipſo Rege apud* Weſtm. xij. *die* Maii, *an. regni ſui* 30.

And by that appeareth, although the Record be remaining *in Banco*, yet the King may ſend to remove it into the Chancery.

And if a man be arraigned of Murther, and it is found that he killed the party *ſe defendendo*, he ought for to ſue a *Certiorari* to remove the Record into the Chancery, and upon the Removal thereof to have his Pardon; and the form of the Pardon doth appear in the Regiſter, *fol.* 287, and 288.

G And if a man be attainted in Aſſiſe of *Novel diſſeiſin* before the Juſtices of Aſſiſe, of a Diſſeiſin with force, and be afterwards outlawed for the King's Fine; if he will have a Pardon of the Utlagary, he ought for to have a *Certiorari* directed to the Juſtices of Aſſiſe, to certifie the King in his Chancery the tenor of the Record of the Aſſiſe, and alſo another Writ to the Juſtices, to certifie the King in his Chancery whether the Defendant in the Aſſiſe hath yielded himſelf to priſon, and hath ſatisfied the party his damages. And if the ſame be ſo certified in the Chancery, then upon that Certificate he ſhall have his Pardon of the Outlawry, and the form of the Charter of pardon appeareth in the Regiſter, 288.

And if a man be condemned in the Common Pleas in Debt and Outlawry upon the ſame; then before he ſhall have his Pardon, he ought for to yield himſelf to the Priſon of the Fleet, and ſatisfie the party, and the Record of his Condemnation and of the ſatisfaction ought to be certified by *Certiorari* unto the King in his Chancery; and thereupon he ſhall have his pardon: and that is by the Statute of 5 *E.* 3. *cap.* 12.

And if a man be outlawed ſeverally at the Suit of three ſeveral perſons in ſeveral Actions in which he was condemned, he ought to ſue a *Certiorari* to remove the tenor of thoſe Records and Proceſs into the Chancery; and alſo to have a *Certiorari* to the Juſtices of the Common Pleas, if the Suit be there, to certifie the King in Chancery whether he hath yielded himſelf to the Priſon of the Fleet, and hath ſatisfied the Parties: and when the Chief Juſtice hath certified the ſame into the Chancery, then he ſhall have his pardon for the Outlawries, and not before: and the form of the Pardon appears in the Regiſter, 288.

H There is another *Certiorari* to the Eſcheator, to certifie the manner and cauſe of taking of Lands into the King's hands after the death of one; and the Writ is ſuch:

Rex Eſcheatori, &c. *ſalut'. Cùm quibuſdam cert. de cauſis certior. volumus ſuper mod. & caption. terr. & tenementor. quæ fuer. I. defuncti in B. in Ball. tua per te in manum noſtram, ut dicit': Tibi præcipim', quòd nos in Canc. noſtra ſuper mod. & cauſa ſuprad. ſub ſigillo tuo diſtinct. & apert. ſine dilatione redd. certior', hoc Breve nobis remittentes. Teſte*, &c.

But note, that it is enacted by Statute, that if the Eſcheator find any Office of any Lands or Tenements for the King, that he ought for to return the Office into the Chancery, [248]

or into the Exchequer, within a month after the finding thereof, upon pein of 20 *l.* payable to the King, and to him that will ſue for the ſame: and that Statute was made *Anno* 8 *H.* 6. *cap.* 16.

There is another *Certiorari* directed to the Eſcheator, to A certifie the King in Chancery, at his peril, the value of the Knights Fees and of the Advowſons which *I.* had, who is dead, who held of the King the day of his death in *Capite*; and the Writ is thus:

Rex Eſcheatori, &c. *Volent. certiũ de cauſis certior. ſuper vero valore Feod. Milit. & Advoc. Eccleſiar. quæ fuer. I. defunct', qui de nobis tenuit in capit. in Ball. tuæ die quo obiit, & quæ occaſion. mortis ejuſd. I. capt. ſunt in manum noſtram; Tibi præcipimus, quòd Feod. illa & Advocat. præd. per ſacrament', &c. diligent. extendi facias, quantum, viz. valeant per an. in omnibus exit. juxta valor. eorund', & Extentam illam diſtinctè & apertè factã. nobis ſub ſigillo tuo & ſigillis eorum per quos fact. fuer. ſine dilatione mitt', & hoc Breve.* Teſte, &c.

And if a Lunatick or a Mad-man doth kill a man, or if B a man doth kill a man by misfortune, or if an Infant of 8 years old doth kill a man; if they will ſue a Pardon for the ſame, the uſe is, to ſue a *Certiorari* to remove the tenor of the Record and Proceſs into the Chancery, and thereupon to have a Pardon: and in the Regiſter do appear ſeveral forms of ſuch *Certioraries* to remove ſuch Records, which a man may ſee there more fully, and therefore they are not here mentioned.

Writ of Forcible Entrie upon the Statute of 8 H. 6.

THE Writ upon the Statute of 8 *H.* 6. of *Forcible Entry* C lies, where a man is diſſeiſed or put out of his Lands or Tenements with force, whereof he is ſeiſed as of an Eſtate of Freehold in Fee tail, or in Fee, or for Life; he may ſue forth that Writ of *Forcible Entry* upon that Statute: or if he be diſſeiſed or put out of his Lands or Tenements peaceably, and afterwards the Diſſeiſor or he who ouſteth him doth keep and detain the Lands and Tenements with force, then he who is put out may ſue that Writ if he will, and in that Writ he ſhall recover his damages and his coſts treble for what he is found damnified by the Jury, and what he hath expended in that Suit.

If a man enter into any Lands and Tenements, and diſ- D ſeiſeth another with force, and keepeth the Lands and Tenements

nements and detaineth them with force; then he who is ouſted and diſſeiſed may have that Writ, although the words of the Statute are in the diſjunctive, *ſcil.* Where a man is diſſeiſed with force, or where a man doth diſſeiſe one peaceably, and afterwards doth keep the Lands with force; becauſe the intent of the makers of the Statute was to puniſh ſuch force, whether it were upon the Entry and Diſſeiſin, or upon the keeping and detaining of the Lands, *&c.*

E And note, that none can have or maintain that Action but he who hath a Freehold in the Lands or Tenements at the leaſt: for Tenant for years cannot maintain the Action, becauſe the words of the Writ are, *expulit, & diſſeiſivit*; and Tenant for years cannot be diſſeiſed, *&c.* And the form of the Writ is ſuch:

F *Rex Vic', ſalutem. Si* A. *fecerit*, &c. *tunc pone* B. *&c. ad reſpond. tam nobis quàm præfat.* A. *quare cùm in Statuto in Parliamento apud* Weſtm. *anno regni Regis* H. *nuper Regis* Angliæ 6. *progenitor. noſtri* 8. *tento, edit. inter cætera contineat', Quòd ſi aliqua perſona de aliquibus terris ſeu tenementis manu forti expulſa ſit & diſſeiſ', vel pacificè expellat', & poſtea manu forti extrateneat', vel aliquod Feoffament. vel Diſcontinuatio indè poſt talem ingreſſ. pro jure poſſeſſor. defraudando & tollend. aliquo modo fiat, habeat pars in hac parte gravata verſus talem Diſſ. Aſſiſam novæ diſſ. vel Breve de Tranſgr'; & ſi pars gravata per Aſſiſam vel per Actionem Tranſgreſſ. recuperet, & per Veredict. vel alio modo per debit. Legis formam inveniat', quòd pars Def. in terr. & tenement. vi ingreſſ. fuerit, vel ea poſt ingreſſum ſuum per vim tenuerit, recuper. Querens dampna ſua ad triplum verſus Def' & ulter. Finem & redemption. nobis faciat: prad.* B. *præf.* A. *de Liber. tenemento ſuo in* B. *manu forti expulit & diſſeiſivit, & cum ſic expulſ. & diſſeiſ. extratenet de eod', in noſtri contemptum, & ipſius* A. *dampn. non modicum & gravam', ac contra form' Statuti pradict', & contra pacem noſtram. Et habeat ibi nomina Plegior', & hoc Breve. Teſte*, &c.

G And the Proceſs in that Writ is Attachment and Diſtreſs, and Proceſs of Utlagary, *&c.*

H If a man entreth with force in Lands or Tenements into which he hath Title and right of Entry, and put the Tenant of the Freehold out of thoſe Lands or Tenements; now he who is ſo put out with force ſhall not maintain an Action of Forcible Entry againſt him who had title or right of Entry, becauſe that that Entry is not any Diſſeiſin of him: but he may indict him for this entring by force, and 15 H. 7. 17, 18. 9 H. 6. 19.

by this Indictment he ſhall be reſtored to his poſſeſſion a-
[249] gain; and that is by the Stat. of 8 *H.* 6. *c.* 9. And in this A
Action of Forcible entry the Plaintiff ſhall recover treble
damages, as well for the occupying of the Lands, as for
the firſt Entry therein. And a man may have a Forcible B
entry of a Rent, as well as of Lands.

And if a man entreth and diſſeiſeth another with force, C
and afterward the Diſſeiſee re-entreth againſt; yet the Diſ-
ſeiſee may bring his Action of Forcible entry, and recover
8 H. 8. f. 5. his treble damages, although he be ſeiſed of the Land at
the time of the Action brought: but if a man continueth
three years in peaceable poſſeſſion, without interruption,
then he may hold the Lands with force, and ſhall not be
puniſhed for that force; and that by the ſame Statute.

And in the Writ of forcible entry, the Defendant may D
plead Not guilty, and it ſhall be a good Plea; but if the
Defendant doth plead matter in Bar, yet he ought in the
end of his Plea in Bar to traverſe the Entry with force
which is alledged, as to ſay, *Abſque hoc* that he did enter
with force, *&c.* but yet the Demandant or Plaintiff ought
to anſwer to the ſpecial matter alledged in the Bar, without
anſwering to the Traverſe with force, *&c.*

27 H. 7. 17. And if the ſpecial matter alledged in the Bar be found
for the Defendant, he ſhall be excuſed, and the force ſhall
not be enquired of; and if it be found with the Plaintiff,
and againſt the Defendant, the Defendant ſhall be attainted
of the force, and ſhall pay treble damages and coſts, with-
out enquiry of the force: and the ſame is the uſage at this
day. And one Joint-tenant, or Tenant in Common, may
maintain this Action againſt his Companion, if he be put out G
with force, *&c.*

And if a man do enter with force, and doth detain with E
force any Lands or Tenements; the party may have his
Action upon the Statute of *Northampton*, made *An.* 2 *E.* 3.
c. 3. and the Writ ſhall be ſuch:

Rex Vic', &c. *Quia datum eſt nobis intelligi, quod quam-* F
plur. maleſactores & pacis noſtræ perturbatores in Conventi-
culis congregati, armati, & modo guerrino arrayati, apud C.
acceder', & clauſ. & domos quorund. liegiorum noſtrorum
ibid. per vim & potentiam armat. intrar', & res, redditus
& proventus, ac alia bona ſua quacunque de quibuſcunque poſ-
ſeſſionibus ſuis ibidem provenient', capere conſent', & aſpor-
tare intendunt, & ad hoc parant, in noſtri contempt', ac
quorundam de populo noſtro ibid. terrorem & commotionem
manifeſtam, ac contra form. Stat. apud Northampton. *de armis*

contra

contra pacem Domini Ed. *nuper Regis* Angliæ *tertii, progenit. nostri, non portand. editi, & contra pacem nostram: Nos, Statutum prædict. inviolabilit. observar', & idem infringentes juxta vim & effectum ejusdem Stat. castigari facere volentes & puniri, tibi præcipimus, quod apud Villam de C. & alibi in Com. tuo ubi necesse fuerit, publice proclam', & ex parte nostra firmit. inhiberi fac', ne quis, cujuscunque Stat. sive conditionis fuerit, ibidem armatus contra pacem nostram ac form. Stat. præd. accedat, nec armatam potent. nec quicquam aliud ibidem seu alibi fac', per quod Pax nostra seu Stat. præd. ledi, vel popul. noster terreri, turbari, aut indebite gravari poterit quovis modo, sub pœna amissionis armorum suorum, & incarceration. corporum suorum ad voluntatem nostram, prout in Stat. prædict. plenius continetur. Et omnes illos quos post & contra Proclamation. & Inhibitionem præd. inveneris contraria facientes, vel per inquisitionem per te modo & form. debitis capiend. inveneris fecisse, una cum armis & armaturis suis secum invent', arrestar. & capi, & corpora ipsorum arrestator. in prisona nostra, quousque aliud à nobis pro deliberatione sua habueritis in mandat', salvo custodir. ac arma, & armaturas præd. appreciari, & nobis inde respond. fac': nos vero in Cancell. nostra sub sigillo tuo de nominibus arrestator. præd', ac de armis & armaturis suis & quæ & cujusmodi fuerint, & de pretio vel de vero valore eorund', ac de toto facto tuo in hac parte, redd. distinct. & aperte sine dilation. certiores, hoc breve nobis remitt. Teste, &c.*

Writ of Mainprise.

THE Writ of Mainprise lieth properly, where a man is taken for suspicion of Felony, or indicted of Felony, for the which thing by the Law he is bailable, and he offereth sufficient Sureties unto the Sheriff or others who have authority to bail him, and he or they do refuse for to let him to bail; then he who is so kept in prison may sue forth such writ:

Rex Vic', &c. Ex parte R. *capti & detenti in Gaola nostra* Glouc. *pro quodam Latrocinio ejusdem equi apud* S. *ut dicitur, facto, unde coram te per quand. Inquisitionem ex officio tuo captam indictatus est, ut dicit', nobis est ostensum, quod licet ipse tibi frequent. obtulerit suffic. Manucapt', qui eum manucaperent, juxta formam Stat. apud* Westm. *dudum editi, in quo continetur, quod de hujusmodi Latrociniis coram Vic. vel Ballivis per Inquisitiones ex officiis suis captos indictati replegiabiles sunt, dum tamen bona fama sint; tu tamen Manucaptores*

captores illos à præfat. R. *recipere, & ipſum per Manucaptionem huiuſmodi à Gaola prædict. hucuſque deliberare diſtuliſti, & adhuc differs, in ipſius* R. *diſpendium non modicum & gravamen, & vitæ ſuæ periculum manifeſtum, & cont. form. Stat. prædict. & quia volumus quod idem* R. *in priſon. prædict. contra formam Statuti prædict. diutius detineatur, Tibi præcipimus, quod ſi*
[250] *idem* R. *bona fama ſit, & per Inquiſit. coram te ex officio tuo captam de Latrocinio prædict. indictatus fuerit, ut prædict. eſt, & pro eodem Latrocinio, & non alia occaſione, in priſona prædict. detineatur, & invenerit tibi ſuffic. Manucaptores, qui eum manucapere voluerint habere coram Juſt. noſtris ad Gaolam noſtram prædict. deliberand. aſſignatis vel aſſignandis, in proximo adventu eorund. pro Gaola illa deliberand', ad ſtand. recto de Latricinio prædict. ſecundum Legem & conſuetud. regni noſtri Angliæ, tunc ipſum* R. *à priſon. prædict. interim deliberari fac. per Manucaption. ſupradict', juxta form. Stat. prædicti; & habeat ibi nomina Manucaptor. illorum, & hoc Breve. Teſte,* &c.

But note, that it is ouſted by the Statute made *An.* 28 *E.* 3 A
c. 4. that the Sheriff ſhall not take the Indictments by writ
or Commiſſion directed unto them. And ſee the Statute of B
Weſt. 1. *cap.* 15. for thoſe who ſhall be bailed.

And if a man be indicted of Felony before the Bailies of C
the Hundred, and put into the Gaol for the ſame, if he
offer ſufficient Sureties to the Bailies, and they will not bail
him, then he who is impriſoned may have ſuch a writ unto
the Sheriff thus:

Rex Vic', &c. *Ex parte* I. *nobis eſt oſtenſ. ut cum ipſe per quoſd. æmulos ſuos de Latrocinio ejuſd. bovis* Ric. *&c. apud* R. *facto, ut dic. coram Ball.* F. *de* B. *de Hund. ſuo de* P. *per Inquiſitionem ex officio eorund. Ball. captam, indictatus, & ea occaſione captus, & in priſona noſtra de* D. *detentus exiſtat; & licet idem* I. *frequent. ſibi obtulerit ſufficien. Manucaptores, qui eum manucaperent, juxta formam Statuti apud Weſtm. dudum editi, in quo continetur,* &c. *ut ſupra. Tibi præcipimus, quod ſi idem* I. *bona fama ſit, & per Inquiſitionem coram eiſd. Ballivis ex officio ſuo captam de Latrocinio prædict. indictatus fuerit, ut prædictum eſt, & pro eod. Latrocinio,* &c. *ut ſupra,* &c.

And there is another writ for a man who is taken for ſuſpicion of Felony, and kept in priſon: and another writ for him who is arreſted and kept in priſon for petty Larceny, *&c.* But this clauſe ſhall then be put into the writ, *viz. Si de aliis Latrociniis prius rectati non fuerint:* but this clauſe, *dum tamen bonæ famæ ſint* ſhall not be put in that writ, where it is ſued for him who is taken for petty Larceny.

And

And if a man who is of good fame be appelled by an Approver, for which cause he is arrested and kept in prison; then he may sue a writ to the Sheriff, to let him be bailed upon good Sureties.

And so if a man be appelled by an Approver, and be taken and kept in prison, and afterwards the Approver dieth; he may sue a writ to the Sheriff to set him at liberty upon sufficient Bail, if he be not a notorious Felon, although he be not a man of good fame.

E And if a man be indicted as accessory to a murther, as by his assent and procurement, or receit, *&c.* or of aiding or counselling, *&c.* and be taken for the same, he may sue a writ to the Sheriff to take Bail of him, until the Principals be convict or attainted, if they be of good fame: but the Statute of *West.* cap. 15. doth not speak so largely as the writs in the Register do, for the Statute doth not speak of Commandment, Abetment, or Consent, *&c.*

F And if a man be taken by the King's Commission, and kept in prison for Felony, or evil doing, he may by his friends put in Sureties in the Chancery, that he will appear before the Justices, *&c.* and be of good behaviour, *&c.* and that body for body; and thereupon he shall have a writ out of the Chancery unto the Sheriff, or unto the Constable of the Castle where he is imprisoned, to set him at liberty, if he be imprisoned for that cause, and for no other.

G And if a man be indicted before Justices of Peace of Trespass, and imprisoned for the same by process, he may sue a writ out of the Chancery, directed to the Sheriff, to take Bail of him to appear before the Justices at the Sessions, and to set him at liberty: but the Justices of Peace may take Bail of him, and set him at liberty, if they so please.

H If a man be indicted of Trespass before the Justices of the Peace, and put in prison therefore, he may sue a *Certiorari* to remove the Indictment into the King's Bench, directed to the Justices of Peace, and a *Habeas Corpus* to the Gaoler, that he bring the party at his costs before the King in his Bench such a day, *&c.*

I And if a man be indicted of Forestalling, and put in prison for the same, he may sue a writ out of the Chancery to the Sheriffs, to take Bail of him to appear before the Justices, *&c.* to answer the Trespass, and then to set him at liberty.

K And if a man sueth a writ of Error upon false judgment given against him in any City or Borough, where he is condemned

demned, and kept in Prison; he may sue a writ out of the Chancery, directed to the Mayor or Bailies of the City or Borough, to take Surety of him to answer what shall be due to the King and to the party, if the Judgment be affirmed; commanding them for to set him at liberty.

And so if a man sueth an Appeal of *Maihem* against another, and afterwards he is arrested at the Suit of the Defendant, or of another in any City or Borough, to the intent that he may not sue his Appeal; he may have a writ out of the Chancery to the Bailies or Mayor, that he take Sureties of him to answer to the party there, and that they set him at liberty: and all those writs appear in the Register. L

[251]

And if a man be appelled of Robbery, he may sue a writ out of the Chancery to the Sheriff, that he take Sureties of him to appear before the Justices, *&c.* and that he set him at liberty; and if he have not arrested him, that he do not arrest him, if the party offers to find such Sureties to the Sheriff, *&c.* A

And if a man be sued in Debt or Trespass, and be arrested by *Capias* or *Exigent*, and kept in prison, he may sue a writ to the Sheriff out of the Chancery, to take Bail of him to appear at a day, *&c.* and that he set him at liberty, *&c.* But now by the Statute made *Anno* 23. *H.* 6. every Sheriff is bounden to let to Bail every one in his custody, who is arrested by Writ, Bill or Warrant, in any Action Personal, or upon Indictment of Trespass, if they offer reasonable Sureties to appear at the day, *&c.* in such places where the Writ, Bill, *&c.* is returnable, *&c.* but persons condemned, or outlawed, or excommunicated, or taken for Surety of the Peace, or persons who are committed to Prison by the commandment of any Justice, and persons wandring who refuse to serve, who remain in the Custody of the Sheriff, all those persons are excepted, for the Sheriff ought not to let such persons to Bail. B

If a man be condemned in Trespass before Justices of the Peace, and be arrested and put into prison in the custody of the Sheriff, he may sue a writ out of the Chancery to the Sheriff, that he take Bail of him, and set him at libeety; and also he may have a writ directed to the Justices of the Peace, commanding them to take Bail of him, and set him at liberty: or if the party do find Sureties in the Chancery to appear and stand right in Law, then he shall have a writ directed to the Justices of Peace, or unto the Sheriff, to set him at liberty. C

D If a man be bounden in a Statute-Merchant payable at a day certain, and at the day he pay part of the money, and hath a Release from the Conusee, of the residue, if the Conusee sue Execution, and arrest the party who hath the Release, then the Recognisor may sue in Chancery, *&c.* by his friends, and find Sureties, body for body, that he shall appear such a day in the King's Bench, and pay the money there, if he cannot otherwise be discharged; and thereupon he shall have a writ to the Sheriff, reciting the whole matter, and how he hath found Sureties in the Chancery, as is aforesaid, commanding him for to set him at liberty; and thereupon the Sheriff ought for to set him at liberty; and if he will not so do, he shall have an *Alias*; and a *Pluries*, and an Attachment against the Sheriff, *&c.*

I And if a man be condemned in any Court, and he is taken in Execution, and afterwards he is removed by a *Habeas Corpus* or a *Certiorari* in Chancery; he shall not be bailed, but shall be remanded to prison, there to remain according to the Law, until he hath satisfied the party Plaintiff, *&c.* *An.* 2 *H.* 5. *cap.* 2.

F And two Justices of the Peace, whereof one is of the *Quorum*, may let men suspected of Felony, or other persons who are bailable, to Bail, until the next General Sessions or Gaol-delivery: but the Justices of Peace are bound there to certifie at the next General Sessions, or Gaol-delivery that Recognisance unto the Justices, *&c.* upon pein of forfeiture of 10 *l.* and that is by the Statute of 3 *H.* 7. *cap.* 3.

G And he who is acquitted of Murther within the year at the King's suit, shall not be released out of prison until he find Sureties to appear at any time the Justices will require him until the end of the year, *&c.* because the party may sue his Appeal after against him within the year, *&c.*

H And what persons are bailable, and what not, appeareth by the Statute of *West.* 1. *c.* 15.

And the Justices of Gaol-delivery may punish those who let men to Bail, who are not bailable, by the Statute *de Finibus*, *cap.* 3.

I And *An.* 4 *E.* 3. *cap.* 2. The Marshal of the King's house cannot let those to Bail who are indicted or appelled of Felony, who are committed to them, *&c.* but the Justices of the King's Bench may punish them, *&c.* And *Anno* 5 *E.* 3. *cap.* 8. they cannot let to bail those who render themselves at

at the *Exigent* in Felony, and are committed to the Marshal, nor by Bail nor Baston; and if they do, they shall be imprisoned for half a year, and fined at the King's pleasure.

Writ of Diem clausit extremum.

THE Writ of *Diem clausit extremum* properly lieth, where the King's Tenant, who holdeth of him *in capite*, as of his Crown, by Knights service, or in Socage, dieth seised, his Heir within age, or of full age; then that writ ought to issue forth, and the same ought to be at the Suit of the Heir, &c. for upon that, when the Heir cometh of full age, he ought for to sue Livery of his Lands out of the King's hands: and the writ is such:

[252]

Rex dilect. sibi W. *de* K. *Escheatori suo in Com.* Devon', *salut. Quia* W. *de* S. *qui de nobis tenuit in capite, Diem clausit extremum, ut accepimus; Tibi præcipimus, quod omnia terras & tenementa de quibus idem* W. *fuit seisitus in dominico suo ut de feodo in Balliva tua die quo obiit sine dilatione cap. in manum nostram, & ea salvo custodiri fac', donec aliud inde præceperimus, & per sacramentum proborum & legal. hominum de Balliva tua, per quos rei veritas melius sciri poterit, diligent. inquiras, quantum terra & tenementorum idem* W. *tenuit de nobis in capite, tam in dominico, quam in servitiis, in Balliva tua die quo obiit, & quantum de aliis, & per quod servic', & quant. terra & tenementa illa valent per annum in omnibus exitibus, & quo die idem* W. *obiit, & quis propinquior hæres ejus sit, & cujus ætatis: & inquisic. inde distincte & aperte fact. nobis in Cancell. nostra sub sigillo tuo, & sigillis eor. per quos fact. fuerit, sine dilatione mittas, & hoc Breve. Teste*, &c.

4 Eliz. Dyer. 213. They shall be only of the Lands in Socage *in capite*, and not of the Lands holden of other Lords.

And if the King hath a Ward, and afterwards one who holdeth of the said Ward his Lands by Knights service dieth, his heir within age, or of full age; then a *Diem clausit extremum* after his death shall issue in this form:

Stamf. 13. *Plow. Com.* 204.

Rex dilect', &c. *Quia* I. *de* S. *qui de hæred.* W. *de* O. *defuncti, qui de nobis tenuit in capite, infra ætatem & in custod. nostra existen', tenuit per servic. militare, Diem clausit extremum, ut accepimus; Tibi præcipimus, quod omnia terras & tenementa*, &c. *& per sacramentum*, &c. *quantum terrarum & tenementorum idem* I. *ten. de hæred. prad. & quis propinquior hæres ejus sit*, &c. *ut supra.*

And if the heir dieth being in the custody of the King, then shall issue another writ of *Diem clausit extremum* in this form:

Rex,

Rex, &c. *Quia* B. *de* H. *filius & hæres* I. *de* H. *defunctli, qui de nobis tenuit in capite, nuper dum infra ætatem & in cuſtod. noſtra fuit Diem clauſit extremum, ut accipimus; Tibi præcipimus, quod per ſacramentum, &c. inquiras, quæ terr. & quæ tenementa per mortem præd.* I. *& ratione minoris ætatis hæredis prædict.* I. *ad manus noſtras devenerunt, & ſic in manu noſtra exiſtunt, & quantum inde de nobis tenent in capite, & quantum de aliis, & per quod ſervitium, & quantum, &c.*

C And if the King's Tenant dieth who holdeth by Knights ſervice, and his wife be endowed, and the King hath the Wardſhip of the Lands for the Nonage of the Heir, and afterwards the Tenant in Dower dieth, the Lands being in Ward in the King's hands; then a *Diem clauſit extremum* ſhall be ſued in this manner.

Rex dilecto ſibi N. *de* B. *Majori Civit. ſuæ* London', *& Eſcheatori ſuo in eadem Civitate, ſalut. Quia* E. *quæ fuit uxor* I. *de* B. *dudum defuncti, quæ quaſdam terras & quaſdam tenementa de nobis tenuit in dotem de hæreditat. prædict. quondam viri ſui, Diem clauſit extremum, ut accepimus; Tibi præcipimus, quod omnia terras & tenementa quæ eadem* E. *ſic tenuit in dotem de hæreditat. præd. in Balliva tua, &c. per ſacrament', &c. diligent. inquiras, quæ terras & tenementa eadem* E. *ſic tenuit in dotem de hæred. præd. in Balliva tua die quo obiit, & quantum inde de nobis tenet in capite, & quantum de aliis, & per quod ſervic. &c.*

D Otherwiſe after the death of Tenant for life of Lands of which the King hath the Reverſion in Ward:

Quia A. *qui quaſdam terras & quadam tenementa de hæred.* E. *conſanguin. & hæred.* H. *de* P. *defuncti, qui de Rege tenuit in capite, infra ætat. & in cuſtodia Regis exiſtent', tenuit ad terminum vitæ ſuæ, Diem clauſit extremum, &c. Tibi præcipimus, &c.* Or thus; *Quia* A. *qui quaſdam terras & quadam tenementa de nobis tenuit per Legem* Angl. *de hæred.* M. *uxoris ſuæ dudum defuncta, Diem clauſit extremum; Tibi præcipimus, &c.*

F And if Tenant for life, the Remainder to the King and his Heirs, dieth, the King ſhall have a *Diem clauſit extremum* in this manner:

Quia A. *quæ fuit uxor, &c. qu. quaſdam terras & quadam tenementa tenuit ad vitam ſuam, & quæ poſt mortem ipſius* A. *nobis & hæredibus noſtris remanere debent, Diem clauſit extremum, &c. Tibi præcipimus, &c. quæ eadem ſic tenuit, &c. & quæ poſt mortem, &c. remanere debent, &c.* Or thus; *poſt mortem præd.* B. *ad manus noſtras ratione minoris ætat. præfat. hær. deven', &c.*

And

And there are divers other forms of writs in the Regiſter after the death of Tenant for life, or Tenant in Dower.

And if the King hath the Temporalties of the Biſhop in his hands, and afterwards one who holdeth by Knights Service of thoſe Temporalties dieth, his Heir in Ward to the King, then the *Diem clauſit extremum* ſhall be in ſuch form: G

Rex, &c. *Quia* A. *qui de Archiepiſcopatu* Cantuar. *vacant', & in manu noſtra exiſtent', tenuit per ſervic. militare, Diem clauſit extremum*, &c. *Tibi præcipimus*, &c. *de quibus idem* A. *fuit ſeiſitus in dominico ſuo ut de feodo*, &c. *& tenuit de Archiepiſcopatu præd. ſine dilatione*, &c.

And if the King hath an Idiot in his cuſtody, and afterwards the Idiot dieth, the writ of *Diem clauſit*, &c. ſhall be thus: H

Rex, &c. *Quia* B. *de* C. *nuper Fatuus & Idiota, cujus terra & tenementa ratione Fatuitatis ejuſdem in manu noſtra exiſtunt, Diem*, &c. *ut accepimus; Tibi præcipimus, quod per ſacramentum*, &c. *diligent. inquiras qua terra & qua tenementa ratione Fatuitatis præd.* B. *in manum noſtr. capta fuerunt, & adhuc in manu noſtra exiſtunt, & de quo vel de quibus tenentur, & per quod ſervicium, & quantum terra illa valent*, &c. *& quis propinquus*, &c. *& Inquiſic.* &c.

[253]

And if a writ of *Diem clauſit extremum* be ſent to the Eſcheator, and the Eſcheator be removed from his Office, or dieth before he make the enquiry, &c. then ſhall iſſue forth another writ of *Diem clauſit extremum*, which ſhall be ſuch: A

Rex, &c. *Cum nuper dat. nobis intelligi, quod* I. *de* B. *qui de nobis ten. in capite, Diem clauſit*, &c. *præceperimus dilecto nobis* W. *de* O. *nuper Eſcheatori noſtro in Com. præd. quod omnia terras & tenementa*, &c. [ut ſupra, mutatis mutandis] *ac idem* W. *ab Offic. præd. jam ſit amotus, per quod Executio brevis noſtri præd. fieri non poteſt: Nos ſuper præmiſſ. volentes certior', tibi præcipimus, quod per ſacramentum*, &c. *diligent. ſuper præmiſſ. fac. Inquiſic', & eam diſtincte*, &c. *Teſte*, &c.

And another form of writ in this manner:

Rex dilect. &c. *Cum nuper dat. nobis intelligi, quod* I. *de* B. *qui de nobis tenuit in capite, Diem clauſit*, &c. *præceperimus dilecto & fideli noſtro* H. *de* B. *nuper Eſcheatori noſtro in eodem Com', quod omnes terras*, &c. *ſine dilatione caperet in manum noſtram*, &c. *donec aliud inde præcepiſſem', & per ſacramentum*, &c. *inquireret quantum terra*, [ut in primo Brevi] *ac idem* H. *antequam præd. Breve fuerat execut', ab Officio præd. fuerat amotus: Nos volentes ſuper præmiſſ. plenius certiorari, tibi præcipimus, quod ſuper articulis præd. & cet. ſingulis diligenter facias Inquiſic', & eam diſtincte & aperte fact', &c.* ut ſupra.

Eat

But if the firſt Eſcheator do make Inquiry by force of the Writ, and afterwards dieth before the Inquiſition be returned into the Chancery, &c. then a *Certiorari* ſhall be awarded againſt his Executors, to certifie the ſame Inquiſition; becauſe it is a good matter of Record when it is found, and the Jurors have put their Seal unto the ſame.

B If the King's Tenant, who holdeth of him by Knights ſervice, dieth, his Heir within age, and no Writ is awarded within one year after his death, then, after the year is paſt a Writ called a *Mandamus* ſhall iſſue forth; and that Writ doth not vary in words from the Writ of *Diem clauſit extremum*; and the Writ is ſuch:

Rex dilecto ſibi W. de E. Eſcheatori ſuo in Com. B. *ſalut'. Præcipimus tibi, quod per ſacramentum proborum & legal. hominum de Balliva tua, per quos*, &c. *diligenter inquiras quas terras & quæ tenementa* I. *de* B. *tenuit de nobis in capite, tam in dominico quàm in ſervicio, in Balliva tua die quo obiit, & quantum de aliis, & per quod ſervicium, & quant. terræ & tenementa illa valeant per annum in omnibus exitibus, & quo tempore idem* I. *obiit, & quis propinquior*, &c. *& cujus ætatis, & quis vel qui terras & tenementa illa à tempore mortis prad. occupavit vel occupaverunt, & exitus & proficua indè percepit vel perceperant, quo titulo, & qualiter, & quomodo*, &c. *& Inquiſitionem*, &c.

C And note, that if a man ſue a Writ of *Diem clauſit extremum*, it ought to be ſued within the year, and after the year he ſhall have that Writ of *Mandamus*, and not a *Diem clauſit extremum*. And if a man ſue forth a Writ of *Diem clauſit extremum*, and he loſeth the Writ, or the ſame is taken from him with force againſt his will, he ſhall not have a new *Diem clauſit*, &c. But if he hath a *Diem clauſit*, &c. and the heir be found within age, and that the King hath title to him, becauſe that his Anceſtour held of the King at the time of his death by Knights ſervice, and afterwards the heir dieth being in Ward to the King, and no Writ of *Diem clauſit extremum* within the year after his death; yet there a *Mandamus* ſhall not be awarded after the year of the death of the Ward, but a new Writ of *Diem clauſit extremum*, becauſe the heir died in Ward to the King; and that is by the Rule of the Regiſter. *Vide* 1 El. z. Dyer 170. 5 E. 4. 13.

D Or if the King's tenant who holdeth of the King by Knights ſervice in chief dieth, the heir may have a ſpecial Commiſſion directed to certian perſons, to enquire what Lands, &c. his Father held the day of his death, &c. and that ſpecial Commiſſion ſhall be as good for the heir as a Writ of *Diem clauſit extremum* after the death of his Anceſtour. And upon ſuch

Commiſſion and Inquiſition taken thereupon, and found and returned in the Chancery, the Heir at full age ſhall have his Livery as well as upon a Writ of *Diem clauſit extremum* ſued forth, *&c.* But upon a general Commiſſion to enquire of all Wards, *&c.* the Law is otherwiſe; for the Heir upon ſuch a Commiſſion and Inquiſition returned ſhall not have Livery.

When the Heir who is in Ward to the King by reaſon of Lands holden in *Capite* cometh to his full age, then he ſhall have a Writ directed to the Eſcheator, to prove his age, before he ſhall have Livery of his Lands, and the Writ is ſuch:

Rex dilecto ſibi I. *de* B. *Eſcheatori ſuo in Com.* B. *ſalut'. Quia* I. A. *de* B. *qui* M. *ſororem & unam hæred.* R. *defuncti, qui de Domino* Ed. *nuper Rege* Angliæ, *Avo noſtro tenuit in Capite, duxit in uxorem, dicit præf.* M. *plena ætatis eſſe, & petit à nobis terras & tenementa quæ ſunt de hæreditate ipſius* M. *& quorum una pars in manu noſtra, & alia pars in cuſtod.* I. *de* H. *ex commiſſione dicti avi noſtri, uſque ad legitimam ætatem hæred. ejuſdem exiſtunt, ſibi reddend', per quod volumus quòd eadem* M. *quæ apud* G. *in Com.* N. *nata eſt, & in Eccleſia ejuſdem villæ*
[254] *baptizata fuit, ut dicitur, ætatem ſuam probet coram te: Tibi præcipimus, quòd ad certum diem & locum, quos ad hoc provideris, probationem illam per ſacramentum tam militum quàm proborum & legalium hominum de Ballivâ tuâ, per quos probatio illa capi & veritas ætatis prædict. melius ſciri poterit & inquiri, capias, & ſcire fac. præf.* I. *quòd tunc ſit ibi, ad oſtendend. ſi quid pro ſe habeat vel dicere ſciat, quare prad.* A. *& prædict.* M. *ut illi quæ plena ætatis eſt, ſi plena ætatis ſit, terras & tenementa prad. reddere non debeamus; & Probationem illam ſic captam nobis ſub ſigillo tuo, & ſigillis eorum per quos capta fuerit, ſine dilatione mittas, & hoc Breve. Teſte,* &c.

And by that Writ it appeareth, that the Writ *de Ætate probanda* ſhall be directed unto the Eſcheator of the County where the Heir was born, and not where the Lands of the Heir lie: but yet it ſeemeth reaſonable that he may ſue it where the Lands lie; for it may be that he was born where the King's Writ doth not run, or in *Ireland*, or beyond the Sea, as in *Calais*, &c.

There is another form of Writ thus:

Rex, &c. *Quia* M. *de* P. *filius & hæres* F. *defuncti, qui de nobis tenuit in capite, dic. ſe plena ætatis eſſe, & petit à nobis terras & tenementa quæ ſunt de hæreditate ſua, & in cuſtodia noſtra uſque ad legitimam ætatem hæred. prad', ſibi reddi, per quod volumus,* &c. [uſque ibi, *melius ſciri poterit & inquiri, capias*, & tunc ſic] *Et probationem illam*, &c. ut ſuprà.

There is another form when the King committeth the Ward

Ward during his Non-age, then when he will sue an *Ætate probanda*, he ought to make mention of the same Commitment.

A And if a man be in Ward unto the King by reason of the Temporalties of a Bishoprick in the King's hands, when the Heir cometh of full age he ought for to sue forth an *Ætate probanda*; and the Writ shall mention the whole matter; and yet he doth not hold of the King *in Capite*.

And when the Heir hath proved his age, and the Writ is returned, then he ought to doe his Homage to the King, or agree with the King for the respiting of the Homage, and he shall have such Writ:

B *Rex eidem Escheatori*, &c. *Sciatis quòd cepimus Homagium* I. *de* H. *filii & hæredis* B. *de* H. *defuncti, de omnibus terris & tenementis quæ idem* B. *pater suus tenuit de nobis in capite die quo obiit, & ei terras & tenementa illa reddidimus: Et ideo tibi præcipimus, quòd acceptâ Securitate à præfato* I. *de rationabili Relevio suo nobis solvendo ad Scaccarium nostrum, eidem* I. *de omnibus terris & tenementis prædictis, & de quibus præfatus* B. *pater suus fuit seisina in de dominico suo ut de feodo in Ballivâ tua die quo obiit, & quæ occasione mort. ejusdem* B. *capta sunt in manum nostram, plenam Seisin. habere fac'; salvo jure cujuslibet, & salvâ* Matildæ, *quæ fuit uxor* B. *rationabili Dote sua, ipsum de terris & tenementis prad. secundum legem & cons. regni nostri* Angliæ *contingent', & per nos assignand', Teste*, &c.

C And the Writ aforesaid lieth, where the Heir was of full age at the time of the death of his Ancestor, and sueth his Livery: but if the Heir were in Ward, and hath proved his age, then he shall have a Writ thus:

Rex, &c. *Quia* N. *de* E. *filius & her.* B. *de* C. *defuncti, qui de Domino* Edward. *nuper Rege* Angl', *Avo nostro, tenuit in capite, ætatem suam coram te sufficient. probavit, sicut per Probationem de mandato nostro captam & in Cancell. nostram return. est compertum; ceperimus Homagium ipsius* N. *de omnibus terris & tenementis quæ idem* R. *pater suus tenuit de dicto Avo nostro in capite die quo obiit, & ei terras & tenementa illa reddidimus: Et ideo tibi præcipim', quòd eidem* N. *de omnibus terris & tenementis prad', & de quibus prad.* R. *pater suus fuit seisitus in dominico suo ut de feodo in Ballivâ tua die quo obiit, & quæ per mortem ejusdem* R. *in manum dicti Avi nostri capta fuer', & in manu nostra sic capta existunt, plenam Seisin. habere fac'; salvo jure cujuslibet. Teste*, &c.

D And if the Husband seised in Fee in right of his Wife be outlawed of Felony, for which the Lands came into the King's hands, and afterwards the Husband who is outlawed dieth; a Writ of *Diem clausit extremum* shall be awarded, which shall be such: *Quia*

Quia A. *cujus terr. & tenementa, quæ ipſe tenuit de jure & hæreditate* N. *nuper uxoris ſuæ adhuc ſuperſtit', ad manus Domini* Edward. *nuper regis* Angliæ *quarti poſt Conqueſt', occaſione cujuſd. Utlagar. in ipſum* A. *pro quadam Felonia unde indictatus fuit, ut dicitur, promulgat', devener', & in manu Domini* Henrici, *&c. patris noſtri, extiterunt, & ſic in manu noſtra exiſtunt, Diem clauſit extremum,* &c. *Tibi præcipimus, quòd per ſacramentum,* &c. *inquiras quæ terra & quæ tenementa ratione. Felon. prad. ad manus ipſius nuper Regis devener', & adhuc in manu noſtra ſic exiſtunt, & de quo vel de quibus tenentur, & per quod ſervitium, & qualiter, & quomodo, & quantum terr. & tenementa illa valent per ann. in omnibus exitibus, juxta verum valor. eorund', & quis vel qui terras & tenementa illa à tempore perpetrationis Felon. prad. occupavit vel occupaver', & exitus & proficua indè percepit vel percep', quo titulo, qualiter & quomodo: & Inquiſic',* &c.

[255] *Quæ plura.*

THE form of the Writ of *Quæ plura* is ſuch: A
Rex Eſcheatori ſuo, &c. *ſalut. Quia dat. eſt nobis intelligi quòd* A. *defunct', qui de nobis tenuit in capite, tenuit die quo obiit plura terr. & tenementa in Com. pradict. quàm in Inquiſition. ind. poſt mortem prad.* A. *de mandato noſtro capta, & in Cancellar. noſtra retornat', ſpecificatur: Tibi præcipim', quòd per ſacramentum proborum,* &c. *inquiras qua plur. terras & tenementa idem* A. *tenuit in Com. pradict. die quo obiit, & de quo vel de quibus illa plura terr. & tenementa teneantur, & per quod ſervic', & quantum valeant per ann. in omnibus exitibus; & Inquiſitionem,* &c.

The Writ of *Melius inquirendo*, lieth, where the firſt Office B
is found by virtue of a Writ of *Diem clauſit extremum*, the which Office wanteth certainty in divers points, as in the tenure of divers Lands, or in the value of any of them, *&c.* then ſhall iſſue forth ſuch Writ of *Melius inquirendo:* but if the firſt Office be found by the Eſcheator *virtute officii ſui*, and not by virtue of any Writ or Commiſſion, and the Office wanteth certainty in divers things, as before; then a *Melius inquirendo* ſhall not iſſue forth, but the Office and Inquiſition returned ſhall be as void, becauſe it is not found by virtue of any Commiſſion or Writ, but onely *ex Officio* of the Eſcheator, without any command to him to doe the ſame; and therefore the ſame ſhall be taken as void, if it want certainty in any point.

Melius

Melius inquirendo.

C THE form of the Writ of *Melius inquirendo* is ſuch: *Rex Eſcheat', &c. ſalut. Cùm per quandam Inquiſic. coram* A. *Eſcheatore noſtro in Com. præd. de mandat. noſtro capt. & in cancell. noſtra retornat', ſit compert', quòd* N. *defunctus tenuit diverſ. terras & tenement', cum pertin. in Com' præd', & quis propinquior hæres eiuſdem* N. *ſit ex parte patris ſui Juratores Inquiſitionis prædict. ignorant. tamen ex parte* R. *matris prædict.* N. *fil.* W. B. *eſt ejus hæres propinquior, & ætatis viginti unius annorum & amplius; & quia in Inquiſitione prædict. quis propinquior hæres ipſius* N. *exiſtat minimè ſpecificat'; Tibi præcipimus, quòd per ſacrament', &c. inquiras quis propinquior hær. præd.* N. *exiſtit, qualiter & quomodo: & Inquiſitionem, &c.*

D There is another form of Writ of *Melius inquirendo*, becauſe he doth not ſpecifie in the Inquiſition what Eſtate the Tenant had in the Lands; or becauſe he doth not ſhew in the Office of whom or of who the Lands were holden; or becauſe he doth not mention in the Writ the true value, and the King is informed that the Lands are of greater value than is certified by the Office. And note that a *Melius inquirendo* ſhall be awarded upon a ſurmiſe made in Court, that the Lands are of greater yearly value than is declared by the Office; and upon like reaſon upon a ſurmiſe made, that they are holden by other Services, or that the Tenant was ſeiſed of other Lands or other Eſtate than is mentioned in the Office, a *Melius inquirendo* ſhall be awarded.

Writ of Livery.

E THere is another form of Writ of Livery, where the King's Tenant *in Capite* dieth, his Heir within age, and the King ſeiſeth the Ward, and afterwards that Heir dieth within age, and in Ward to the King, for which the Lands come unto his Heir who is within age, and in Ward to the King; now when that Heir cometh of full age, he ſhall have a Writ of Livery in this form:

Rex dilecto, &c. Eſcheatori ſuo in Com. I. *ſalut'. Quia* I. *frater & hær.* S. *filii & hær.* I. S. *defuncti, qui de nobis ut de Honore* H. *in manu noſtra exiſtent. tenuit per ſervic', reddend. ad Wardam Caſtri* Dovet. *decem ſolid. per annum, ætatem ſuam cor.* Roger. *de* W. *nuper Eſcheat. noſtr. in Com. præd', ſuffic. probavit, ſicut per Probat. illam de mandato noſtro capt', & in Cancell. noſtrâm retorn', eſt compertum; cepimus Homagium & Fidelita-*

tem ipſius I. *fratris* S. *de omnibus terris & tenem. quæ prad.* I. S. *pat. tenuit de nobis ut de Honore pd. die quo obiit, & quæ poſt mortem prad.* I. S. *patris, & ratione minoris ætatis ipſius* S. *qui quidem* S. *dum infra ætatem & in cuſtodia noſtra fuit diem clauſit extremum, ad manus noſtras devener', debit', & eidem* I. *fratri* S. *omnia terr. & tenem. illa cum pertin. reddidimus. Et ideo tibi præcipimus, quod eidem* I. *fratri* S. *de omnibus terris & tenem. prad. cum pertin. & de quibus prad.* I. S. *pater fuit ſeiſit. in dominico ſuo ut de feodo in Ball. tua die quo obiit, & quæ per mortem ipſius* S. *patris, & ratione minoris ætatis ipſius* S. *ad manus noſtras devener', & ſic in manu noſtra ratione minoris ætat. ejuſdem* I. *fratris* S. *adhuc exiſtunt plenam Seiſinam haber. fac', ſalvo jure cujuſlibet. Teſte,* &c.

And when an Heir ſhall have Livery at his full age, and holdeth one Manor *in Capite* of the King by Knights Service, and holdeth other Lands in ſeveral Counties of others, then a writ ſhall iſſue to the Eſcheator of the County where he holdeth *in Capite*; and the form ſhall be ſuch: *Scias quod cepimus Homagium,* &c. And the writs to other Eſcheators begin thus; *Cum ceperimus Homagium,* &c. P

[256]

21 E. 3. 41. 2c. Of the Honour of Berkamſtead 80 29 H. 8. 24.

And it appeareth by the writ before, that to hold Land to render a certain Rent for the guarding of the Caſtle of *Dover* ſhall be a Tenure *in Capite*, and by Knights Service; and it may be that in ancient time he ſhould guard the Caſtle, and that now the King hath taken Rent for the ſame, and yet the taking of the Rent doth not alter the nature of the Tenure. *Quære.* A

If two men by Licence purchaſe Lands holden of the King *in Capite*, and afterwards one of them dieth, the other ſhall have the Lands *cum exitibus* out of the Kings hands upon the matter found by Inqueſt; but by the Regiſter he ought to ſhew the Licence in the Chancery. B

4 Eliz. Dyer. 213. rule 2c. Plow Com. 209. 204. 20 Eliz. Dyer. 362.

And if the King's Tenant who holdeth in Socage dieth, his Heir of the age of 14 years and more, and the King ſeiſeth the Lands, he ought for to ſue Livery of them. But it ſeemeth the King ought not for to ſeiſe the other Lands which he holdeth of other Lords by other Services, &c. and if he do, the other Lords ſhall have a writ of *Amoveas manum*, which is called an *Ouſter le main, una cum exitibus*, &c. ſo as they ſhall have the iſſues and profits thereof which were taken by the King, and the form of the writ is ſuch: C

Rex dilecto ſibi A. *Eſcheatori ſuo,* &c. *Quia accepimus per Inquiſic. quam per te fieri fecimus, quod* I. *de* T. *defunctus tenuit in dominico ſuo ut de feodo, die quo obiit, unum meſuagium & unam bovat. terræ cum pertin. in* K. *de nobis in capite, ut de*

Honore

Honore Abbatiæ Mariæ *in manu noſtra exiſtent', per fidelitatem & per ſervitium trium ſolidorum & novem denar. nobis annuatim reddend', & quod non tenuit aliqua alia terras & tenementa de nobis in capite ut de Corona in Balliva tua die quo obiit, per quod cuſtod. terr. & tenement. quæ fuer. præd. I. die præd. ad nos ad præſ. debet. pertin. & quod tenuit die præditt. diverſ. alias terras & tenementa de diverſis dominis pro diverſ. ſervic'; quodque* N. *filius pd. I. eſt hær. ejus propinquior, & ætatis ſexdecim annorum & amplius; cepimus Fidelitatem ipſius* N. *de meſ. & terris præd. & ea ei reddidimus. Ideo tibi præc. quod accepta Securitate à præf.* N. *de rationabili Relevio ſuo nobis ſolvend. ad Scaccarium noſtrum, eidem* N. *de meſnag. & terr. præd', quæ occaſione mortis ipſius* I. *cepiſti in manum noſtram, plenam Seiſinam habere facias, ſalvo jure cujuſlibet: de aliis vero terris & tenementis, quæ præfatus* I. *tenuit de aliis dominis in Balliva tua die quo obiit, quæ ſimiliter occaſione mortis prædicti* I. *cepiſti in manum noſtram, te ulterius non intromittas, ſalvo jure noſtro & alterius cujuſcunque & exitus, ſi quos de terris & tenement. quæ de aliis dominis ſic tenent. perceperis, illis ad quos pertinent liberes.*

And by this writ it appeareth, that the Heir in Socage being of full age at the time of the death of his Anceſtor ſhall have *Livery cum exitibus*; but if he were within the age of 14 years at the time of his Anceſtors death, his *procbein amies* muſt ſue an *Ouſter le main cum exitibus*: But the other Lords ſhall have an *Ouſter le main* for the Lands holden of them by Knights ſervice *cum exitibus*. 45 E. 3. 19. 35 H. 6. 52. Stam. Prerogat. 13.

D And if the King hath the cuſtody of an Idiot, and of his Lands, which are holden of the King *in Capite*, and the Idiot dieth, and his Heir be of full age; the Heir ſhall have a writ of Livery in this form:

Rex Eſcheatori, &c. Quia accepimus per Inquiſic. quam per te fieri fecim', quod diverſa terr. & tenementa cum pertin. in O. in manum domini Ed. *quondam Regis* Angl. *avi noſtri, ration. Fatuitatis & Idiot.* W. *de* P. *jam defuncti capta fuer. & in manu noſtra ſic exiſtunt, & quod eadem terr. & tenement. tenentur de nobis in capite, ut de Honore Abbatiæ* Mariæ *in manu noſtra exiſtent. per ſervitium octavæ partis unius feodi militis, & fac. Sect. ad Wapentag. noſtrum de* Holderneſ. *de tribus ſeptiman. in tres, ac reddendo ad Wardam Caſtri noſtri de* Skipton. *ad medium Quadrageſim. decem & ſeptem denarios; quodque* Galfridus, *filius* Will. *de* Redmain *conſanguineus præd.* Will. *eſt hæres ejuſdem* Will. *propinquior, & plena ætatis; cepimus Fidelitatem ejuſdem* Galfrid. *de omnibus terr. & ten. pd. & illa ei reddidimus, ac Homag. ejuſd.* Galfrid. *uſque ad Feſtum*

Paschæ proxim. futur. de gratia nostra speciali respectuamus: Et ideo tibi præcipimus, quod accepta Securitate à præfat. G. de rationabil. Relevio suo nobis reddend. ad Scaccar. nostrum, eidem G. de omnibus terris & tenement, pd. in manu nostra existt. plenam Seisin. habere fac', salvo jure cujuslibet. Teste, &c.

And when the Heir in Ward unto the King is of full age, E he shall have a Writ out of the Chancery unto the Keeper of the privy Seal, testifying that he is of full age; and thereupon he shall have a privy Seal unto the King's Chamberlain to receive his Homage: and when he hath taken his Homage, he shall have a Writ from the Chamberlain to the Chancellor, testifying that he hath taken his Homage; and thereupon he shall have a Writ of Livery. And all this matter appeareth at large in the Abridgments, in the title Livery, which see there.

And if three Coparceners be in Ward to the King, the F Coparcener who first cometh of age shall sue Livery, and shall have Partition made thereupon.

And if an Heir female be in Ward to the King, and hol- G deth of other Lords in Socage; now when she cometh of the age of 14. years she shall not sue Livery of the Lands holden in Socage, but she shall tarry until her age of 16. years, if she be not married before that age, for she shall [257] sue Livery but once for all her Lands, *&c.*

And if the Heir of full age sueth his Livery, and omitteth A any parcel of his inheritance, as an Advowson, or a Reversion, or one Acre of Lands which is not found by the Writ of *Diem clausit extremum*, and thereupon sueth his Livery; if it be found afterwards by another Office, that his Ancestor died seised of that Advowson, Reversion, or acre of Land, which was not found by the first Office upon which he sued his Livery before, then the King may reseise all the Lands, *&c.* and the Heir shall answer the K. for all the Rents, issues and profits received in the mean time by the Heir, *&c.*

If the King's Tenant holdeth by Knight's Service and *in* B *Capite*, and also holdeth other Lands of the Archbishop of *Canterbury* by Knight's Service, and dieth seised, his Heir within age; the King shall have the Lands holden of him in Ward, and the Archbishop shall have the other Lands holden of him in Ward: and that is by the Statute of *Prærogativa Regis*, c. 1. And if the King seiseth all the Lands, the Archbishop shall have an *Ouster le main cum exitibus.*

And if the King's Tenant, who holdeth *in Capite* and C by Knight's Service, dieth seised, and a stranger doth abate, for which the Heir at full age recovereth by Assise of *Mort-*

dauncestor;

Lancester; yet he ought for to ſue his Livery, and to doe his Homage, and the Abator ſhall anſwer the King the mean profits and iſſues received. And the Writ *de Ætate probanda* may be directed to certain Commiſſioners to enquire of the age of the Infant, as well as unto the Eſcheator, and the form of the Commiſſion is ſuch:

Commiſſion pro Ætate probanda.

REX *dilectis*, &c. *Sciatis quòd aſſignavimus vos ad inquirend. per ſacramentum tam militum quàm aliorum proborum & legal. hominum de viſn. de* N. *in Com.* Linc', *ſi* I. *filius & hæres* B. *apud* N. *natus, & in Eccleſia ejuſdem Villæ baptizatus, & qui ratione minoris ætatis ſuæ in cuſtodia noſtra exiſtit, plen. ætatis ſit, ut dicit, necne. Et ideo vobis mandamus, quod ad certos diem & locum, quos ad hoc provideritis, Inquiſitionem illam faciatis, & illam diſtinctè & apertè fact. nobis in Canc. ſine dilatione mittatis, & hoc Breve. Mandavimus enim Vic' noſtro* Linc', *quòd ad diem & locum quos ei ſcir. fac. venire fac'*, &c. *In cujus rei teſtimonium*, &c. And thereupon a Writ ſhall be ſent to the Sheriff to return an Empannel before the Commiſſioners at a certain day by them appointed. And the Writ ſhall be ſuch:

Rex Vic', &c. *Præcipimus tibi, quòd ſum. per bonos Sum.* xij. *tam milites quàm alios probos & legales homines de viſn. de* N. *quod ſint coram dilectis & fidelibus noſtris* A. B. *&* C. *& hiis quos ſibi aſſociavimus, ad certos diem & locum quos iidem* A. B. *&* C. *tibi ſcire faciant, parati ſacramento recognoſcer', ſi* F. *filius & hæres* D. *apud* N. *natus, & in Eccleſ. ejuſdem Vill. baptizatus, qui ratione minoris ætat. ſuæ in cuſtodia noſtra exiſtit, plenæ ætatis ſit, ut dicit, necne; & interim ad præd. Eccleſ. & Villam accedant, & veritatem ætatis præd. diligent. inquirant: & nomina eorum imbreviari fac'. Et ſcire fac' E. & S. cuſtodibus terræ præd. hæredis, quòd tunc ſint ibi ad audiend. illam Recogn', & ad oſtendend', ſi quod obſtare debeat quar. præd.* I. *terras & tenementa ſua habere non debeat; & habeas ibi nomina illorum duodecim, & hoc Breve. Teſte*, &c.

And thereby it appeareth, that if the King hath committed the Wardſhip of the Land unto another, that the Committee ſhall be warned to be there; but if the King hath the Lands in his own hands, then that clauſe, *Et ſcire facias E. & S. Cuſtodibus*, &c. ſhall be omitted out of the Writ.

And by the Rule of the Regiſter, a Woman ſhall doe Homage and Fealty, and ſhall pay a Relief when ſhe ſueth her Livery, if ſhe be of full age at the time of the death of her

her Anceſtors; and if ſhe hath a husband, if they have iſſue when they ſue Livery, then the husband ſhall do the Homage and Fealty; but if they have no iſſue, then the Husband ſhall do onely Fealty.

And if two Joynt-tenants be, who hold of the King by G
licence of Purchaſe, and one of them dieth, the other ſhall have an *Ouſter le main cum exitibus:* but if the Purchaſe be made without Licence, then not, becauſe that the King ſhall ſeiſe the Lands for the Alienation without Licence.

And if the King's Tenant hath Lands in ſeveral Counties, H
ſome holden of the King, and ſome of other Lords the Writ of Livery ſhall be directed unto the Eſcheator of that County where the Land which he holdeth of the King *in capite* lieth, and the writ ſhall begin, *Scias quod cepimus Homagium*, &c. and he ſhall have writs unto the Eſcheators of the other Counties, and the writ ſhall begin thus, *Cum ceperimus*, &c.

Writ of Livery poſt mortem Patris & Matris.

WRit of Livery after the death of the Father and Mo- I
ther, *&c.* lieth where the Father and Mother hold ſeverally Lands in Fee of the King *in capite*, and they die, their Heir of full age, he may ſue any writ of Livery to have Livery of the Lands of them both, and is not bounden to ſue ſeveral writs, as ſeverally Heir to them. And the form of the writ is *

Rex dilect. ſibi N. *de* W. *Eſcheat. ſuo in Comit. S. ſalut. Sciatis*
[258] *quod cepimus Homagium, & Fidel.* R. *de* B. *filii & hared.* R. *de* B. *che'r. & I. uxoris ejus defunct. nobis debita pro omnibus terris & ten'tis quæ præf.* R. *& I. tenuerunt de nobis in capite diebus quibus obierunt, & ei terras & ten'ta illa cum pertin. reddidimus: & ideo tibi præcipimus, quod accepta Securitate de præf.* R. *de ration. Relevio ſuo nobis ſolvend. ad Scacc. noſtrum, eidem* R. *de omnibus terris & ten'tis prad. cum pertin. in Ball. tua, & de quibus prad.* R. *& I. ſuer. ſeiſiti in dominico ſuo ut de feod. in Ball. tua dieb. quib. obierunt, & quæ poſt mortem prad.* R. *& I. capta ſunt in manum noſtram, plen. Seiſin. habere fac. ſalvo jure cujuſlibet. Teſte*, &c.

Writ of Livery after the death of Tenant by the Courteſie.

THere is another form of writ, after the death of Tenant A
by the Courteſie thus:

Rex dilect. ſibi Eſcheat. ſuo in Com. Linc. *&c. Sciatis quod cepimus*

cepimus Homag. G. *de* N. *filii* I. *de* N. *defuncti, de omnibus terris & tenitis quæ idem* I. *tenuit per Legem* Angl. *die quo obiit, ut de jure* N. *nuper uxor. ejus jam defuncta, quæ de nobis tenuit in capite, matris prad.* G. *cujus hær. ipse est, nobis debet', & terras & tenementa illa ei reddidimus: & ideo tibi præcipimus, quod accepta Securitate ab eodem* G. *de Relevio suo nobis solvend. ad Scaccarium nostrum, eidem* G. *de omnibus terris & tenementis prad. cum pertin. quæ per mortem pd.* I. *capta sunt in manum nostram, plenam Seisinam habere fac. salvo jure cujuslibet. Teste, &c.*

And thereby it appeareth, that the Tenant by the Courtesie shall have the Lands after the death of his wife, without suing an *Ouster le main* for those Lands holden of the King, but that the Heir after his death shall sue his Livery for them, *&c.* because that the Tenant by the Courtesie doth remain Tenant to the King.

And if a man have Lands which are held of the King in *Capite* by the Courtesie, and he hath other Lands in Fee, and dieth; his Heir shall sue Livery as well for the Lands whereof the Tenant was seised in Fee, as for the Lands which he held by the Courtesie, although the Lands of which the Tenant by the Courtesie was seised in Fee were not holden of the King *in Capite*, &c. because that as well those Lands are seised into the King's hands, as the Lands which he held by the Courtesie; and the writ shall be such:

Rex dilecto sibi, &c. *Escheat. in Com.* Ebor. *salutem. Scias quod cepimus Homag. & Fidel.* G. *filii & hæredis* W. *de* S. *& I. quæ fuit uxor ejusdem* W. *de* S. *defunctor', de omnibus terris & tenementis quæ prad.* W. *de* S. *pater suus tenuit tam per Legem* Angl. *de hæreditate prædict.* I. *quond. uxoris suæ post mortem ipsius* I. *quam in dominico suo ut de feodo die quo obiit, & ei terras & tenementa illa reddidimus: & ideo tibi præcipimus quod accepta Securitate à præf.* G. *filio de rationabili Relevio suo nobis solvend. ad Scaccarium nostr. eidem* G. *filio* W. *de* S. *de omnibus terris & tenementis prad. cum pertin. & quæ prad.* W. *de* S. *pater suus tenuit tam per Legem* Angl. *post mortem prad.* I. *quond. uxoris suæ, quam in dominico suo ut de feodo in Ball. tua die quo obiit, & quæ post mortem ipsius* W. *de* S. *capta sunt in manum nostram, Seisinam habere fac; salvo jure cujuslibet. Teste,* &c.

And if the King's Tenant dieth, and after his death his wife be endowed, then after the death of the Tenant in Dower, the Lands which she held in Dower shall be seised into the King's hands, and the Heir shall sue Livery of them. And the writ shall be such:

Writ

Writ of Livery after the death of the Tenant in Dower.

REX dilecto sibi T. *de* S. *Escheatori suo in Com.* Ebor', *salutem. Scias quod cepimus Homagium & Fidelitatem dilecti & fidelis nostri* R. *Baron. de* F. *nobis pro omnibus terris & tenementis quæ* A. *quæ fuit uxor* R. *de* N. *quondam uxor* R. *nuper Baronis de* F. *post mortem prædict.* R. *nuper Baronis de* F. *primi viri ipsius* A. *avi ipsius* R. *nunc Baronis de* F. *de nobis tenuit in capite die quo obiit, debit', & ei terras & tenementa illa cum pertin. reddidimus: & ideo tibi præcipimus, quod acceptâ Securitate à præf.* R. *nunc Barone de* F. *de rationabili Relevio nobis solvend. ad Scaccarium nostrum, eidem* R. *nunc Baroni de* F. *de omnibus terris & tenementis præd. cum pertin. quæ præfat.* A. *ten. in dotem post mortem præd.* R. *viri sui, avi præd' nunc Baron', de hæreditate prædict. in Ball. tua die quo obiit, & quæ post mortem prædict' A. accept. sunt in manum nostram plenam Seisinam habere fac'; salvo jure cujuslibet. Teste,* &c.

B

And by that it appeareth, that Tenant in Dower who is endowed in the Chancery, &c. of Lands holden of the King *in capite*, or of other Lands which are in the Kings hands by the death of his Tenant, that she shall hold them of the King, and the Heir shall have Livery of those Lands after her death: yet it seemeth that the Reversion of those Lands which she holdeth in Dower remaineth not in the King, but in the Heir; and if she commit Waste, the Heir shall punish the Waste.

There is another form of Writ of Livery, after the death of the King's Tenant, who holdeth parcel in Fee, or parcel in Tail or for Life, thus:

C

Writ of Livery after the death of Tenant in tail and Tenant for life.

REX dilect', &c. *Escheatori suo in Com.* Salop. *& March. Walliæ eidem Com. adjacent', salutem. Quia cepimus Homag. & Fidelitat. dilecti & fidelis nostri* I. *de* B. *filii & hæred.* I. *de* B. *senioris, de omnibus terris & tenementis cum pertin. quæ idem* I. *tenuit de nobis in capite, tam in feodo quàm ad termin. vitæ, die quo obiit, & quæ post mort. dicti* I. *patris dicto* I. *filio pertin. descendere, vel eid.* I. *filio &* S. *ux. ejus & hæred. de corpor. suis exeuntibus debent aliqualit. remanere, & ei terras & tenementa illa reddidimus: ideo tibi præcipimus, quod acceptâ Securitate à præf.* I. *de rationabili Relevio suo nobis solvend. ad Scaccar. nostrum, eidem* I. *filio de omnibus terris & tenemen-*

[259]

tenementis prad. cum pertin', & de quibus prad. I. pater ſuus fuit ſeiſit. in dominico ſuo ut de feodo talliato, quorum Reverſio ad dict' I. filium pertinet, in Balliva tua die quo obiit, & qua per mort. ejuſd. patris ſui capta ſunt in manum noſtram, plenam Seiſinam habere facias, ſalvo jure cujuſlibet. Teſte, &c.

And if Tenant in tail holdeth of the King *in capite*, and dieth, the Heir then of full age, he ſhall have ſuch Writ of Livery.

Writ of Livery for the Heir in tail.

A *REX, &c. Scias quòd cepimus Homag. & Fidelitat. dilect. nobis W. &c. filii & haredis W. de B. defuncti, de omnibus terris & tenementis quæ prad' W. pater ſuus ſibi & her. ſuis de corp. ſuo exeunt', ex dono & conceſſione W. de S. per Finem indè in Cur. noſtra de licent. noſtra levat', de nobis in capite die obitûs ſui tenuit, & terras & tenementa illa ei reddidimus: & ideo tibi præcipimus, quòd acceptâ Securitate à præfat. W. &c.*

And if the King's Tenant holdeth by Petit Serjeanty, and dieth, and his Heir be within age of eighteen years, then he ſhall have a Writ to have Seiſin of the Lands, thus:

Writ of Livery for Lands by Petit Serjeanty.

B *REX dilecto, &c. Eſcheat. ſuo in Com. Suff. ſalutem. Quia accepimus per Inquiſition. quam per te fieri fecimus, quòd T. P. defunctus tenuit in dominico ſuo ut de feodo die quo obiit decem meſuag', centum acr. terræ, quadraginta acr. prati, & decem acr. paſturæ, triginta acr. more, ac viginti ſolid. reddit. cum pertin', in W. Com. prad', de nobis in capite, per ſervitium viginti ſolid. nobis ad Manerium de L. annuatim ſolvend. pro omni ſervitio, & quòd non tenuit aliqua alia terr. ſeu tenementa in dominico ſuo ut de feodo de nobis, nec de aliis, in Com. prad. die quo obiit, & quòd W. filius prad. T. eſt hares ejuſd. T. propinquior, & ætatis decem & octo annor. & amplius; Tibi præcipimus, quòd captâ Fidelitate ipſius W. juxta form. cujuſd ſcedulæ præſentibus intercluſæ, & acceptâ Securitate ab eod. W. de rationabili Relevio ſuo nobis ſolvend. ad Scaccar. noſtrum, eid. W. de meſuag', terra, pratis, more & redditu prad. cum pertin', quæ per mort. prædict' T. capta ſunt in manum noſtram, plenam Seiſinam habere fac', ſalvo jure cujuſlibet. Teſte, &c.*

And thereby it appeareth that the Heir in Socage ſhall not have Livery *cum exitibus*, &c. if he paſs the age of 14 years; but within the age of 14 years he ſhall have Livery *cum exitibus*, &c. and the ſame is holden for a difference at this day.

The

The King's Tenant hath iſſue a Son *D. de* B. and two Daughters, and dieth; and the ſaid *D. de* B. hath Livery, and afterwards hath iſſue a Son *H. de* B. and dieth, the ſaid *H.* being in ward to the King for his Non-age, and afterwards one Siſter hath iſſue a Son and dieth, and afterwards *H.* dieth being in Ward to the King, and his Aunt and the Son of the other Siſter, being of full age, ſue to have Livery: now they ought to have a writ directed to the Eſcheator, by which it ſhall be commanded to the Eſcheator to make Livery to them, and to make Partition between them of thoſe Lands which are in the King's hands, ſo as each Coparcenor ſhall have part of the Lands which are holden of the King *in capite*; and the Writ ſhall be ſuch:

Writ of Livery for the Aunt and Neece to make Partition.

REX dilecto ſibi A. de H. Eſcheat. ſuo in Com', &c. ſalutem Scias quod cepimus Homagium & Fidelitat. tam de D. de B. filio A. de B. unius ſoror. D. de B. quam de T. de B. alter. ſoror. prad. D. de B. conſanguin. & hæred. H. de B. filii & hær. prædict. D. de B. defunct. qu. de nobis tenuit in. capite, nobis, pro omnibus terris & tenem. qua prad. D. de B. tenuit in capite, qua per mort. prad. D. de B. & ratione minoris ætatis H. filii & hær. ejuſd. D. de B. qui quidem H. dum infra ætat. & in cuſtod. noſtra fuit Diem clauſit extremum, ad manus noſtras devener', debita, & eiſd. D. de B. & T. terr. & tenem. prad. reddidimus; & ideo tibi præcipimus, quod accepta Securitate à præf. D. de B. & T. de rationalibus Releviis ſuis nobis ſolvend. ad Scaccar. noſtrum, factaque legali partitione omnium terrarum & tenemen. cum pertin. in Balliva tua, qua per mort. prædict. D. de B. & ratione minoris ætatis pd. H. ad manus noſtras devener', & in manu noſtra adhuc exiſtunt, juxta Extent. inde factam, vel aliam ſi neceſſe fuerit iterato faciend', in duas partes æquas in præſent. pd. D. de B. & T. vel Attorn. ſuorum in hac parte præmuniendor', ſi intereſſe voluerint, eiſd. D. de B. & T. de partibus ſuis, ipſ. inde juxta partition. ill. ſecundum Legem & conſuetud. regni noſtri Angl. contingent. plenam Seiſinam habere fac. ſalvo jure cujuſlib'. Proviſo ſemper, quod uterque pd. D. de B. & T. partem terr. & tenem. qua de nobis tenent in capite, & pur partem ſuam habeat, & tenens noſter exiſtat cum pertin. ill. &c. Teſte, &c.

And if a man and his wife hold a Manor of the King *in capite* in tail, and die, and have iſſue two Sons, and the younger Son is found Heir by virtue of a Writ of *Diem clauſit*

clauſit extremum, and of full age, and the King maketh Livery unto him of the Manor, and afterwards by another Office found by Commiſſion, *&c.* it is found that the elder Brother his Son and Heir, *&c.* then upon the laſt Office found the King ſhall ſend a *Scire facias* directed to the Sheriff, to warn him to ſhew why the Manor ſhall not be reſeiſed into the King's hands, and he to anſwer the Profits received in the mean time. And if the Sheriff do return the writ ſerved, and that the party is warned and doth not appear; then the King ſhall reſeiſe the Lands, and ſhall make Livery of that Manor unto the elder Brother; and the writ by which the Service ſhall be made ſhall be ſuch:

Writ of Livery, and to make void a Livery made before.

REX dilecto ſibi, &c. *Eſcheatori ſuo in Com.* &c. *Cum nos nuper, comperto per Inquiſition.* H. *de S. Eſcheatoris noſtri in Com. prad. ad mandatum noſtrum captam, & in Cancell. noſtram retornatam, quod* I. *filius* H.B. *defunctli, & T. uxor. ejus, qua praf.* I. *quondam virum ſuum ſupervixit, ſimilit. defunct. tenuerunt diebus quibus obierunt in feodo talliat. ſibi & har. ſuis de corporibus ſuis exeuntibus Manerium de* I. *cum pertin. in Com. prad. de nobis in capite per ſervitium milit. & quod* T. *filius prad.* I. *& T. tunc fuit propinquior har. eorund.* I. *& T. & plena atatis, cepimus Homagium & Fidelitat. ipſius* T. *nobis pro Man. prad. debita, & ei Man. illud cum pertin. reddidimus, illudque ſibi mandaverimus liberari, ſicut per inſpectionem Rotulorum Cancellaria noſtra plene liquet; ac poſtmodum ſupplicant. nobis* H.B. *filio & har. eorund.* I. *& T. ut cum per quandam aliam poſteriorem Inquiſitionem, per praf. Eſcheat. de mandat. noſtro captam, & in Cancell. noſtram retornatam, ſit compertum, quod prad.* I. *& T. tenuerunt diebus quibus obierunt in feodo talliato ſibi & hared. ſuis de corporibus ſuis exeuntibus prad. Manerium cum pertin. de nobis in capite per ſervitium militare in forma prad. & prad.* H. *filius pd.* I. *& T. atatis quadraginta & ſex annorum, eſt frater ſenior ejuſdem* T. *& heres eorundem* I. *& T. propinquior, abſque hoc quod pradict.* T. *eſt hares eorundem* I. *& T. propinquior, prout per dictam primam Inquiſitionem ſupponis, velimus Man. pradict. cum pertin. in manus noſtras reſumi, & eidem* H. *ut fratri ſeniori pradict.* T. *& propinquiori har. eorundem* I. *& T. liberari jubere; ac nos volentes in hac parte fieri quod eſt juſtum praceperimus per Brev. noſtr. Vicecom. noſtr. Com. pradict. quod ſcire faceret praſat.* T. *quod eſſet cer. nobis in Cancellar.*

noſtra

noſtra in Octavis S. Hilarii *proxim. præterit', ubicunque tunc foret, ad oſtendend. ſi quid pro ſe haberet aut dicere ſciret, quare Man. præd. cum pertinen', unà cum exitibus indè per ipſum perceptis, in manum noſtram reſumi, & idem Man. præf.* H. *ut fratri ſeniori ejuſdem* T. *filio & propinquiori hær. eorund.* I. *&* T. *liberari, & nobis de exitibus præd. per præf.* T. *ſic præcept. reſpond. non deberet, & ad faciend. ulterius & recipiend. quod Cur. noſtra conſideravit in hac part'; ac præditt. Vicecom. nobis returnaverit, quòd ſcire fecit præfat.* T. *quod eſſet coram nobis in Canc. noſtra ad diem præditt', ubicunque tunc foret, ad oſtend. quod Breve noſtr. pd. requirebat, ad quem diem præd.* T. *in Canc. præd. ſolemniter vocat. non comparuit, per quod conſiderat. fuit, quòd Manerium præd. cum pertin', unà cum exitibus indè per pd.* T. *percept', in manum noſtram reſumant', & nobis de exitibus eiſd. reſpondeatur, dilectumque Maner. præf.* H. *liberet'; ceptimus Homagium & Fidelit. ejuſd.* H. *nobis pro Manerio pd. cum pertin. debita, & ei Maner. illud cum pertin. reddidimus: Tibi præcipimus, quòd reſumpto in manum noſtram Manerio præd. cum pertin. in Ballivâ tuâ, unà cum exitibus pd. & acceptâ Securit. à præfat.* H. *de rationabili Relevio ſuo nobis ſolvend. ad Scacc. noſtr', eid.* H. *de Manerio pd. cum pertin. plenam Seiſin. ſine dilatione haber. facias, juxta conſider. pd'; ſalvo jure cujuſlibet, & ſalvis nobis exitibus de Maner. pd. à tempore mortis præd.* T. *ſic percept'. Teſte, &c.*

Writ of Livery and Partition which ſhall iſſue out of the Chancery unto the Eſcheator upon Partition there made.

THE Writ which ſhall be directed to the Eſcheator to deliver Seiſin of Lands unto one Coparcener, or divers, where any of them are within age, and in Ward, is made in ſeveral manners. One manner of Writ is, when one Coparcener is of full age, and the other Coparcener is within age, and in the Cuſtody of *P*, to whom the King hath committed the Wardſhip; then by the aſſent of the King's Committee the Partition may be made in the Chancery during the Nonage of the Heir in Ward; and then the Writ directed to the Eſcheator ſhall be ſuch:

[261] *Rex dilecto ſibi* I. *de* W. *Eſcheat. ſuo in Com.* Som. *&* Dorſ. *ſalutem. Sciatis quòd ex aſſenſu* P. *&c. Cuſtod.* T. *de* M. *filia* A. *unius ſororum* T. *de* B. *defuncti, qui de nobis tenuit in capite, infra ætatem. & in cuſtodia noſtra exiſtent', conſanguin. & unius hær', cui una propars, &* C. *ſororis, & alterius hær. præd.* T. *de* B. *plenæ ætatis exiſtent', cui altera propars tam terrarum*

terrarum & tenementor. qua Margeria, *qua fuit uxor* T. *de* B. *senior. similit. defunct', tenuit in dotem, seu alias ad terminum vitæ suæ hæreditat. prad.* T. *de* M. *&* C. *die quo obiit, pertinent; assignavimus præf.* C. *maneria, terr. & tenementa subscripta, viz. manerium,* &c. *habend. in propartem ipsius* C. *ipsam de omnibus maneriis, terris & tenementis prad. secundum Legem & consuetudinem regni nostri contingent', & eidem* C. *cujus Homagium & Fidelitatem cepimus, in propartem suam prædict. reddidimus: Et ideo tibi præcipimus, quod acceptâ Securitate de præf.* C. *de rationabili Relevio suo nobis solvend. ad Scaccarium nostrum, eidem* C. *prad. maner',* &c. *cum pertin. suis in Balliva tua liberes habend. in propart. sua prad'; salvo jure cujuslibet,* &c.

A And the King's Tenant hath iſſue *R. N.* his Son, and *Alice* his Daughter, and dieth, and afterwards *R. N.* hath iſſue a Son *F.* and two Daughters *E.* and *C.* and afterwards *R. N.* dieth ſeiſed, *F.* being within age, and afterwards *F.* dieth ſeiſed in Ward to the King within age; and after his death It is found by virtue of an Office by Writ, that *E.* and *C.* are his Siſters and next Heirs, and of full age; and afterwards by another Office it is found by Commiſſion, *&c.* that *M.* ſon of the ſaid *Alice*, one of the Siſters of the ſaid *R. N.* and *J.* another Siſter of the ſaid *R. N.* Father of the ſaid *F.* was Couſen and next Heir to the ſaid *F.* and of full age; upon which the Siſters of the ſaid *F.* came into the Chancery, and had a *Scire facias* againſt the ſaid *M.* ſon of the ſaid *Alice*, and the ſaid *J.* &c. to ſhew wherefore they ſhould not have Livery of the Lands as Heirs, *&c.* And that Writ of *Scire facias* was made returnable the Monday which was the ſecond week of Lent; by which it appeareth that the Writs which ſhall be ſued in Chancery may be returned there in the Vacation time, out of Term: and upon the return of that *Scire facias*, the ſaid *M.* came and granted that he was not Heir, *&c.* whereupon the two Daughters *E.* and *C.* had a Writ of Livery directed to the Eſcheator, reciting all the matter, and reciting in the Writ, that the King had reſpited their Homage until a certain day, commanding the Eſcheator that he make Partition betwixt them, and that he aſſign to each of them a part of the Land which is holden of the King *in Capite*; which Writ ſhall be returned and enrolled in the Chancery; the which Writ is in the Regiſter, *fol.* 316.

Partition and Livery after the death of Tenant by the Courteſie.

B IF it be found by Office by virtue of a writ, that *B.* held the Manor of *B.* by the Courteſie of *England*, in the right of *E.* who was his wife, which Manor is holden of *P.* by Knights ſervice; and it be farther found by the ſame Office, that *B.* is dead, and *M.* and *A.* are his next Couſins and Heirs, and one of them is within age, and the other of full age: then he who is of full age ſhall have a writ of Livery to the Eſcheator, that he take Security for the payment of his Relief, and that he make Partition betwixt the two Heirs, *viz. M.* and *A.* in the preſence of him who is of full age, and in the preſence of the *prochein amies* of him who is within age, and that he deliver Seiſin of his part to him who is of full age, and that he retain in the King's hands the part of the other Siſter. Which writ ſhall be returned and enrolled in the Chancery, and that writ appeareth in the Regiſter, *fol.* 31[illegible].

And the like writ is in the Regiſter, where the King's Tenant dieth, one of his Daughters within age, and the other of full age, in the ſame folio 317.

Partition and Livery for Lands in Socage.

C IF a man holdeth Lands of *G.* in Socage, as of his Manor of *B.* which *G.* and the Manor is in the Ward of the King for the Non-age of *G.* and alſo he holdeth other Lands of other Lords by other ſervices, and dieth, and hath iſſue two Daughters, whereof one is within age, and the other of full age; they ſhall have Livery out of the King's hand, *ſc.* the *prochein amies* of the Heir within age ſhall have *Livery cum exitibus*, and the other daughters ſhall have *Livery ſine exitibus*, and a ſpecial writ ſhall be directed unto the Eſcheator in that caſe, reciting the whole matter, and how that the King hath taken Fealty of her who is of full age, and delivered to her her part, commanding the Eſcheator by the writ, that he take Security of her of full age for her Relief, and that he make Partition betwixt the Daughters of the Socage Land; and that he deliver the part of the younger unto her *prochein amies*, with the iſſues and profits of that part from the death of the Anceſtor; and that he intermeddle not with the Lands holden of the other Lords: which ſee Regiſter, *fol.* 318.

If

A If the King's Tenant hath iſſue three Daughters, and he giveth part of his lands unto one of his Daughters in Frank-marriage, and one of the other two Daughters hath iſſue within age and dieth, and afterwards the Tenant in Frank-marriage dieth, his heir of full age, and then the King's Tenant dieth, and then by Office *virtute Brevis* it is found, that the Daughter of the King's Tenant and the Iſſue of the two Daughters are Heirs to the King's Tenant, and that the Iſſue of one of the Daughters is within age; and afterwards by another Office it is found, that the Kings Tenant gave part of his Lands to one of his Daughters in Frank-marriage, for which upon that Office found, the other Daughter, and the iſſue of the ſecond Daughter, who is within age, have a *Scire facias* againſt the iſſue of the Daughter who was advanced in Frank-marriage, to ſhew at a certain day in the Chancery wherefore the Lands, of which the King's Tenant died ſeiſed, &c. ſhould not be delivered to them as Heirs onely unto the King's Tenant; and if the iſſue of her who was advanced in Frank-marriage, being warned by the *Scire facias*, and ſo returned warned by the Sheriff, maketh default, or cannot ſhew matter ſufficient to maintain her Title; then thereupon a Writ of Livery ſhall be awarded to the Eſcheator, rehearſing how that the King hath taken Homage and Fealty of the eldeſt Daughter, and that he hath rendred to her her part, commanding the Eſcheator, that he take Security of the eldeſt Siſter to pay her Relief into the Exchequer, and that he make Partition in two equal parts in the preſence of the parties, if they will come, and that he deliver ſeiſin to the Siſter of full age of her part, and that he retain the other part in the King's hands for the Non-age of the Daughter of the other Siſter. See the writ thereof in the Regiſter, 320. [262]

B If *A.* holdeth a parcel of Lands in Socage of *B.* which *B.* is in Ward to the King, and alſo the ſaid *A.* holdeth another parcel of Lands of *C.* in Socage, who is alſo in Ward to the King for Non-age, and alſo the ſaid *B.* holdeth other Lands of ſeveral other Lords by other ſervices, and afterwards the ſaid *A.* hath iſſue ſeven Daughters, and afterwards one of the Daughters hath iſſue within age, and dieth, and then *A.* dieth, and all that matter be found by Office, then upon that Office returned they ſhall have a writ to the Eſcheator, commanding him that he take Fealty of the ſix Daughters for their parts, and for their Reliefs to be paid in the Exchequer, and that he make Partition of all the Lands into ſeven parts in the preſence of the parties, if they will be there, and

that he deliver full Selfin to the ſix Siſters of their parts, and that he keep in the King's hands the part of her who is within age, until the King otherwiſe command him; and that he deliver the Lands and Tenements which are holden of the other Lords, which are aſſigned for the part of her within age, unto the *Prochein amie* of the Infant to whom the Inheritance cannot deſcend, and that he deliver the iſſues and profits of the Lands holden of other Lords than of thoſe Lords who are in the cuſtody of the King, to thoſe who of right ought to have them. And after that this Writ is awarded to the Eſcheator, if the Eſcheator be removed after that he hath made the Partition according to the Writ, and before the Return of the Writ, then the Siſters may ſue forth a new Writ to the new Eſcheator, reciting the whole matter, and how the Eſcheator was removed before he had executed the command unto him, commanding the new Eſcheator, that if the Partition be not made, that he doe all ſuch things as the other Eſcheator ought to have done, and retain in the King's hands, *&c.*

And then if the new Eſcheator upon that new Writ return unto the King in Chancery, that by virtue of the ſaid Writ he hath made Partition of ſeven parts of thoſe Lands, and that he hath retained in the King's hands the part of her who is within age, and that he hath delivered unto three of the Siſters their parts, and that the other three Siſters did not come to take their parts, ſo that they remain in the King's hands; upon ſuch return the ſaid three Siſters may come into the Chancery, and pray to have a Writ unto the Eſcheator, with the Tranſcript of the Partition to be encloſed therein, commanding him to take Security of them for their Reliefs, *&c.* and that he deliver to them their parts appertaining unto them, according to the Partition made retaining in the King's hands the part of her who is within age, until he hath command to the contrary, and that he return the Writ, and what he hath done upon the ſame, under his Seal, fully and openly without delay. See the Writ thereof in the Regiſter, 319.

And it appeareth by the Regiſter, that if the King's Tenant C
hath iſſue two Daughters, and one be within age, and the other of full age, and dieth, that ſhe who is of full age may ſue unto the King to have the Cuſtody of her Siſters part during her Non-age; and to ſue Livery of the other moiety: and thereupon ſhe ſhall have a ſpecial Writ unto the Eſcheator, rehearſing how the King hath taken her Homage, and hath aſſigned unto her the moiety of the Lands, *&c.* which appertained

tained unto her for her part, and that he hath committed the Cuſtody of the other part unto her during the Non-age of the Heir the other Coparcener, commanding the Eſcheator by the Writ, that he take Security of her to pay her Relief into the Exchequer, and that he deliver Seiſin of the moiety unto the Heir of full age, untill the full age of the other Coparcener within age, with the iſſues and profits of the other moiety from the death of the Anceſtor. And thereby it appeareth, that when the other Coparcener within age cometh of full age, they both ſhall ſhew forth a new Livery jointly. See the Regiſter, *fol.* 320. [263]

A And it appeareth by the Regiſter, that if a man hath Lands in *London* in Fee, and hath iſſue two Daughters, and leaſeth the Lands for life, and dieth, and afterwards the Tenant for life dieth, the Daughters of full age, and all the ſame be found by Office; the two Daughters ſhall ſue forth a Writ of Livery for thoſe Lands, becauſe they are holden of the King in Burgage, and the Writ ſhall be directed to the Eſcheator, commanding him to make Partition of thoſe Lands betwixt the Daughters. And if one Daughter be indebted to the King, then by the ſame Writ he ſhall command the Eſcheator, that he retain the part of her who is indebted in the King's hands, untill he hath other command, and that he deliver the other part unto the other Daughter; reciting the ſame Writ, that he hath taken Homage and Fealty of the other Daughter: And moreover, by the ſame Writ the Eſcheator ſhall be commanded, that he take Security of the other Daughter for the Relief of that Coparcener, if any be due, *&c.* and that he return the whole matter into the Chancery under his Seal, *&c.*

B And if the King's Tenant who holdeth of him *in Capite* in Fee dieth, and hath iſſue three Daughters his Heirs of full age, and another Woman who holdeth in Dower other Lands for term of her life of the aſſignment of her Husband, which Lands are alſo holden of the King *in Capite*, dieth, and the Reverſion of thoſe Lands are the Inheritance of the ſaid Daughters; they ſhall have one Writ of Livery unto the Eſcheator for all thoſe Lands, reciting the whole matter, and how that he hath taken their Homage and Fealty, or that he hath reſpited the ſame till a certain day, *&c.* and that he render to them their parts, commanding the Eſcheator that he take Security of them for to pay their Reliefs, *&c.* and that he make equal Partition between them in their preſence, if they will appear, and that he give full Seiſin to each of them of their parts; with ſuch a proviſion, that each

of them ſhall have part of that Rent which is ſo holden of the King *in Capite* for her part, ſo that each of them be Tenant to the King, *&c.* And it appeareth by that writ, that a Rent may be holden of the King by Knights Service *in Capite*, as well as Lands. See the Regiſter, fol. 318.

Writ de Dote aſſignanda.

THE Writ *de Dote aſſignanda* lieth where it is found by Office, that the King's Tenant was ſeiſed of Tenements in Fee or in Fee-tail the day he died, *&c.* and held of the King *in Capite*; then the wife may and ought to come into the Chancery, and there make Oath that ſhe will not marry without the King's Licence; and thereupon the King may aſſign her Dower in the Chancery of thoſe Manors and Lands, and thereupon ſhe ſhall have a writ unto the Eſcheator where the Lands are, which ſhall be ſuch: C

Rex Eſcheatori ſuo in Com. B. *ſalutem. Sciatis quod de terris & tenementis quæ fuer.* N. *defuncti, qui de nobis tenuit in capite, & quæ occaſione mortis ejuſdem* N. *capt. ſunt in manum noſtram, aſſignavimus* I. *quæ fuit uxor præd.* N. *tertiam partem Maner. de* T. *&* C. *in Com.* T. *cum pertinent', necnon* iij. *partem purpart. quæ fuit ipſius* N. *Cur. libertatis Honoris* Winton. *& vij. franci pleg. in dicto Com.* T. *habend. in Dotem, ipſam de Maneriis & purparte præd. ſecundum Legem & conſ. regni noſtri* Angliæ *contingent'; necnon de aſſenſu* Ed. *Principis* Walliæ, *filii noſtri chariſſimi, cuſtod. Maner. de* R. *in* Com. Buck', *qu. ad l. li. & Manerii de* N. *cum pertinent. in dicto Com.* B. *quæ ad x. li. extendunt. per annum, ſicut per Extentas inde de mandato noſtro fact. & in Canc. noſtram return', eſt compert', aſſignavimus præf.* I. *dict. Maner. de* N. *cum pertinent. pro dote ſua dictorum Maner. de* R. *&* N. *habend. in forma præd. Et ideo tibi præcipimus, quod eidem* I. *dictum Maner. de* N. *cum pertinent. liberes habend. in dotem ſuam, ſicut præd. eſt. Teſte*, &c.

And when the wife hath made her Oath in the Chancery, D ſhe may have a writ of *Dote aſſignanda* to the Eſcheator, to aſſign her Dower: and the Writ ſhall recite, that ſhe hath made her Oath in the Chancery, *&c.* But the uſe is to make the Aſſignment of the Dower in the Chancery, and to award a writ unto the Eſcheator, to deliver the Lands aſſigned unto her; and although the King doth commit the cuſtody of the Land unto another, yet the King may aſſign Dower unto the wife in Chancery, and ſhe ſhall have a writ unto the Eſcheator to deliver unto her that Dower, as appeareth by the Regiſter. And the writ ſhall be ſuch:

Rex

Rex Eſcheatori, &c. ſalutem. Cum inter cater. terras & tenement. I. *quæ fuit uxor* N. *defuncti, qui de nobis tenuit in capite, per nos de terris & tenement. quæ fuer. prad.* N. *in dotem aſſignat', aſſignaverimus eidem* I. *partem Maner. de* Grouby *cum pertinent. in Com. prad', necnon tertiam partem purpartis quæ fuit ipſius* N. *Cur. libertatis Honoris* W. *& viſum franci plegii in eodem Com', habend. in dotem in forma pradict': Tibi præcipimus, quod eid.* I. *cujus ſacrament. quod ſe non maritabit ſine licentia noſtra recepimus, dictas, tertias partes in Balliva tua, in præſentia cuſtod. eorundem Maner', & tertiæ partis, per vos inde præmuniend', ſi intereſſe voluerit, vel attornati ſui in hac parte, aſſignar. & liberari fac', habend. in dotem ſicut pradict. eſt; & cum Aſſignationem illam, &c. Teſte, &c.* And if the Wife after the death of the
c Husband doth come into the Chancery, and prayeth her Dower there; the King may grant a writ unto the Eſcheator, [264]
commanding him to take Security of the Wife, that ſhe do not marry her ſelf, and that the Eſcheator do aſſign Dower unto her. And the writ ſhall be ſuch:

Rex Eſcheatori, &c. Præcipimus tibi quod, capto ſacramento M. *quæ fuit uxor* W. *defuncti, qui de nobis tenuit in capite, quod ſe non maritabit ſine licentia noſtra, eid. rationabil. Dotem ſuam, ipſam de omnibus terris & tenem. quæ prad.* W. *quond. vir ſuus tenuit in dominico ſuo ut de feodo in Balliva tua die quo obiit, & quæ per mortem prad.* W. *capta fuer. in manum noſtram, & in manu noſtra ſic exiſtunt, ſecundum Legem & conſ. regni noſtri* Angl. *contingent. per Extent. inde fact. vel alium ſi neceſſe fuer. iterato faciend. in præſentia* B. *per te inde præmuniend. ſi intereſſe voluerit, aſſign. fac'; & cum Aſſignation. ill. ſic feceris, eam ſub ſigillo tuo diſtincte & aperte mittas, ut eam in rotulis Canc. noſtra, prout moris eſt, irrotul. faciamus. Teſte, &c.*

A And if a man dieth ſeiſed of Lands which are holden by Knights Service, of any Manor, or otherwiſe, as in any Abby, Biſhoprick or Priory, or ſuch as are in the King's hands by reaſon of vacancy of the Abby or Biſhoprick, &c. then if the Wife will have Dower, ſhe ought to ſue in the Chancery, to have ſuch writ directed unto the Eſcheator, to aſſign her Dower; but there the Wife ſhall not take Oath, that ſhe ſhall not marry without the King's licence, as appeareth by the Writ: which is ſuch:

Rex, &c. Præcipimus tibi quod A. *quæ fuit uxor* B. *defuncti, qui de Abbatia de Burgo S.* Petri *nuper vacantis, & in manu noſtra exiſtent', tenuit per ſervitium militare rationabil. Dotem ſuam de omnibus terris & tenement', &c. quæ prad.* B. *vir ſuus tenuit de Abbatia prad. in Balliva tua die quo obiit, & quæ poſt mortem ipſius* B. *in manu noſtra exiſtunt, &c. ut ſupra.*

And the like Writ may be ſued by the Wife for Lands which her Husband held by Knights Service of the Manor of him who is in Ward to the King; by reaſon of his Nonage; but there ſhe ſhall not make Oath, that ſhe will not marry her ſelf, no more than in the caſe before.

And the King may aſſign Lands in Dower in the Chancery, rendring Rent yearly to the King, *&c.* becauſe the Lands do exceed the very value of the third part of all the Tenements whereof ſhe ought to have Dower. And then upon that Aſſignment made in Chancery ſhe ſhall have and ſue ſuch Writ to the Eſcheator. B

Rex Eſcheat', &c. Sciatis quòd de terris & tenementis quæ fuerunt E. *de* B. *defuncti, quæ de nobis tenuit in capite, & quæ occaſione mortis ejuſdem* E. *capta ſunt in manum noſtram, aſſignavimus* M. *quæ fuit uxor prædict.* E. *Maneria ſubſcripta, videlicet, Maneria de* B. *&* C. *&c. cum pertin. in Comitatu* T. *quæ ad centum libras extenduntur per annum, habend. in Dotem, ipſam de terris & tenement. prad. ſecundum Legem & conſ. regni noſtri* Angl. *contingent', reddend. inde nobis per annum ad Scaccar. noſtrum tantum quod excedit dotem ſuprad'. Et ideo tibi præcipimus, quòd eid.* M. *dicta Maneria cum pertinen. liberes, ei habend. in dotem ſuam in forma pradict'. Teſte, &c.*

And if the Wife be impotent, ſo as ſhe cannot come into the Chancery to make Oath, and to demand her Dower, then ſhe may ſue a ſpecial Writ directed to certain perſons to take her Oath, and to receive Attorney for the Wife to ſue for her Dower in the Chancery, *&c.* and the Writ appeareth in the Regiſter, *fol.* 298. C

And if the King make Livery unto the Heir at his full age, ſaving unto the Wife her Dower to be aſſigned by the King; then, if the Wife will demand Dower, ſhe ought for to ſue for the ſame in the Chancery; and if ſhe do demand her Dower there, then ſhall iſſue a ſpecial Writ unto the Eſcheator, that he warn the Heir for to be in Chancery at a certain day, *&c.* and there the Wife ſhall have the ſame day to receive her Dower, *&c.* And the Writ which ſhall iſſue againſt the Heir ſhall be ſuch: D

Rex Eſcheat', &c. Cùm Dominus Edw. *nuper Rex* Angl': *pater noſter, xx. die* Januar. *proxim. præterito ceperit Homag. T. de* B. *filii & hæred. T. de* B. *defuncti, de omnibus terris & tenementis quæ idem* T. *pater ſuus tenuit de dicto patre noſtro die quo obiit, &c. & terras & tenementa illa reddiderit eique ſibi mandaver. liberari, ſalvo jure cujuſlibet, & ſalvâ* M. *quæ fuit uxor prad.* T. *rationabili Dote ſuâ, ipſam de terr. & tenement. prad. ſecundum Legem & conſ. regni*

regni noſtri Angl. *contingent', & ei prout moris eſt aſſignand', ſicut per inſpectionem Rotul. Cancell. dicti patris noſtri nobis conſtat; ac præfat.* M. *nobis ſupplicaverit, ut ei Dotem ſuam, ipſam de terr. & tenement. prad. contingent. ſecundum Legem & conſ. regni noſtri* Angl', *aſſignari faciamus, per quam diem dedimus præf.* M. *quòd ſit in Canc. noſtra in craſtin. Animarum, &c. ubicunque, &c. ad recipiend. Dotem ſuam prædict': Tibi præcipimus, quòd ſcire fac. præf.* T. *quod ad diem prad. interfit Aſſignat. Dotis prad', ſi ſibi viderit expedire; & habeas ibi nomina, &c. & hoc Breve. Teſte, &c.*

But if the King maketh Livery unto the Heir by his Writ directed to the Eſcheator, by which Writ he commandeth his Eſcheator to deliver unto him Seiſin of all his Lands, *&c. ſalvo jure cujuſlibet*; and he putteth not in the Writ theſe words, *ſalvâ* M. *quæ fuit uxor*, &c. *rationabili dote ſuâ, ipſam de terr. & tenem', &c. contingent', & per nos aſſignand':* then in that caſe the Wife ought to ſue her Writ of Dower againſt the Heir; if ſhe will demand Dower of thoſe Lands, becauſe the King made Livery generally of thoſe Lands by his Writ, without any reſervation of Dower to be aſſigned by him, *&c.* [265]

A And if the King make a reſervation of Dower to be aſſigned by him by his Writ of Livery which is directed to the Eſcheator, if the Wife never demand Dower, or if ſhe hath Dower aſſigned unto her by the King in Chancery, yet after the Aſſignment made by the King, the reverſion thereof is in the Heir, and he ſhall not ſue Livery of that Reverſion after the death of the Tenant in Dower, becauſe the Writ of Livery doth not reſerve any thing to the King but Aſſignment of Dower to the Wife, but the Writ doth command the Eſcheator to deliver Seiſin of all the Land, and that the Eſcheator doth, and by that the Livery of all the Land paſſeth from the King; and therefore it followeth, that when the Wife is aſſigned her Dower by the King in Chancery, that yet the Reverſion doth remain in the Heir, *&c.* for which he ſhall not ſue a new Livery of that Reverſion after the death of the Tenant in Dower, *&c. Tamen quære* of that Caſe.

If the Land aſſigned to the Wife be evicted, ſhe ſhall have a *Scire facias* to re-ſeiſe the Land, and ſhall be new endowed. 43 Aſſ. 32. Br. Dower 65.

B And if the Wife be aſſigned Dower in the Chancery, and afterward it is ſurmiſed by the Heir, or by another for the King, that the Land aſſigned to the Wife is not extended to the very value, but that the Land aſſigned to her is much more in value than it is extended at, and that the Lands which remain in the King's hands are extended to the very value, *&c.* then the King ſhall ſend a Writ to the Eſcheator to make a new Extent: and upon that Writ returned, if it be found that the Land aſſigned to the Wife is of greater value, *&c.*

&c. then upon Return thereof a *Sciri facias* ſhall be awarded againſt the wife, to ſhew cauſe wherefore ſhe ſhall not be anew endowed, *&c.* and if ſhe be warned, and maketh default, it ſeemeth ſhe ſhall be new endowed for her default; or if ſhe appear, and cannot ſay any thing contrary to that new Extent, ſhe ſhall be endowed anew, ſo as part of the Land aſſigned to her ſhall be taken from her at the King's pleaſure; or the King may make a new Aſſignment of all that ſhe had in Dower, if he pleaſeth, and a new Writ ſhall be to the Sheriff to deliver her Seiſin thereof, ſo newly aſſigned to her: *Quare* the uſe of this point.

And if the Wi e make Oath that ſhe will not marry herſelf C without the King's licence, and is endowed upon the ſame, *&c.* and afterwards ſhe marrieth without licence, *&c.* then the King ſhall ſend a writ to the Eſcheator, that he re-ſeiſe all the Lands which ſhe holdeth in Dower, as appeareth by the Regiſter, and not all the other Lands which ſhe or her Husband had in their own right; and the writ is ſuch:

Rex Eſcheatori, &c. *Cum* A. *qua fuit uxor I. de* B. *defuncti, qui de nobis tenuit in capite, qua nuper ſacramentum præſtitit corporale, quod ſe non maritaret ſine licentia noſtra, jam ſe* W. *de* P. *maritaverit, licentia noſtra ſuper hoc non obtenta ut accepimus; Nos, contemptum hujuſm. nolentes tranſire impunitum, necnon indemnitati noſtræ volentes proſpicere in hac parte, tibi præcipimus, quod ſi ita eſt, tunc omnia terras & tenementa qua prad.* W. *&* A. *tenent in dotem ipſius* A. *de hæredit. prad.* I. *in Balliva tua ſine dilatione cap. in manum noſtram, ita quod de exitibus inde provenientibus nobis reſpondeas ad Scaccar. noſtrum, quouſq; nobis de forisfactura ad nos inde pertin. ſatisfacti fuer', vel aliud inde duxerim. demandand. Teſte*, &c.

Writ de Levari facias.

THE Writ of *Levari facias* is a Writ which ſhall iſſue out D of the Record, and ſhall iſſue ſometimes out of the Chancery, and ſometimes out of other Courts where the Record is. As if a man be bounden in a Recogniſance in the Chancery in 20*l.* to be paid at the Feaſt of St. *Mich.* next following, then if he do not pay the money at the day, a *Levari facias* ſhall be directed to the Sheriff, that he levy the ſum on his Goods and Chattels: and the form of the writ is ſuch:

Rex Vicecom', &c. *Quia* I. *filius* B. *ſolviſſe debuit* M. *de* B. E xx. l. *in Feſto S.* Michaelis, *anno regni noſtri*, &c. *ſicut conſtat nobis per inſpection. Rotulor. Cancell. noſtræ & eam ei nondum ſolvit, ut dic'; Tibi præcipimus, quod prad. pecuniam de*

de terris & catallis ipſius I. *in Ballivâ tua ſine dilatione levari facias, ita quod eâm habeas in Cancell. noſtra in craſt. Nativ. S.* Johan. *Bapt. prox. futur', ubicunq; tunc fuer', præſ.* M. *ibid. liber. & hoc nullatenus omittas: & habeas ibi hoc Breve,* &c.

F And he may have an *Alias*, and a *Pluries*, *Vel cauſam nobis ſignifices*, directed to the Sheriff; and he will not return the Writ, he ſhall have an Attachment againſt the Sheriff.

G And this writ is given by the Common Law before the Statute of *Weſt.* 2. which gave the writ of *Elegit*. But this writ ought to be ſued within the year after the day of payment to be made by the Recogniſance; for after the year and day of payment to be made, if he do not ſue forth this writ, then he ought to have a writ of Debt before the Statute of *Weſt.* 2. which gave the *Scire facias* againſt him who was ſo bounden by Recogniſance; but now by that Statute he ſhall have the writ of *Scire facias* to make him come at a certain day into the Chancery, to ſhew what he can ſay why

H he ought not to pay the ſum, *&c.* And if the Sheriff upon the *Levari facias* return that he hath levied 10 *l.* of the ſum, *&c.* which he hath delivered to the party, *&c.* then upon that Return he who ought for to have the money may ſue forth a *Sicut alias levari facias* directed to the Sheriff, for to keep the reſidue of the ſum; which writ ſhall be ſuch: [266]

Rex Vic', &c. *Quia* T. *Abbas de* B. *ſolviſſe debuit* R. *centum libras*, &c. *in Feſto*, &c. *anno*, &c. *ſicut conſtat*, &c. *& eas*, &c. *per quod tibi præceperimus, quod prad. pecuniam de terris & catallis ipſius Abbatis in Ballivâ tua ſine dilatione levari fac', ita quod eam haberes in Canc'*, &c. *ubicunque*, &c. *præſ.* R. *ibid. liberand'; ac tu nobis returnaſti, quod cepiſti, in manum noſtram per diverſas vices de bonis & catallis ipſius Abbatis ad valenc'*, &c. *qu. inde levaſti, & præſ.* R. *habere feciſti; Tibi præcipimus, quod reſid. debiti prad. de terris & catallis ipſius Abbatis in Ballivâ tua ſine dilatione levari facias, ita quod illud habeat coram nobis à die*, &c. *ubicunque*, &c. *præſ.* R. *ibid. liberand: & hoc nullatenus omittas*, &c. *Teſte*, &c.

And if a Parſon be bounden in a Recogniſance in Chan- 12 H. 4. 17.
A cery in 200 *l.* to pay at a certain day, *&c.* and he doth not 13 H. 4. 17.
pay the ſame at the day, then the Recogniſee ſhall have a *Levari facias* directed to the Biſhop, or a *Levari facias* directed to divers Biſhops, to levy the money of his Spiritual

E goods; and the writ ſhall be ſuch:

Rex venerabili in Chriſto Patri, &c. *ſalut. Quia* I. *Perſona Eccleſia de* S. *Cum.* H. *veſtra Dix'*, *& T. de* L. *Perſona Eccleſia*

Eccleſiæ de M. *Com. de* B. *Dioc.* Linc', *ſolviſſe debuer. magiſtro* F. *ducent. libras in Feſto Omnium Sanctorum, &c. anno, &c. ſicut conſtat &c. ut dicit; Vobis mandamus, quòd centum & viginti marcas de ſum. prædict. de bonis & catallis ipſius* I. *in dicta Dioc. veſtra ſine dilatione levari fac', ità quod eaſdem centum & viginti marcas habeamus in Canc. noſtra ubicunque, &c. præf.* F. *ibid. liberand': & hoc nullatenus omittat': & habeatis ibi hoc Breve. Mandavimus etiam* W. Linc. *Epiſcopo, quòd ipſe centum & viginti marcas, &c. reſiduas de bonis Eccleſiaſticis ipſius* T. *in dicta Dioc. levari faceret in forma prædict'. Teſte, &c.*

But if the Parſon hath Lands of his own purchaſe, he may B
have a Writ to the Sheriff to levy the ſame, *&c.* But now by the Statute of *Weſtm. 2. cap.* 18. he may ſue forth an *Elegit* upon the Recogniſance made in the Chancery, directed to the Sheriff, to have Execution of the moiety of his Lands, and of all his Goods and Chattels, except his beaſts of the Plough, and to deliver them to the Heir for his maintenance; and the form of the Writ is ſuch:

Rex Vicecom, &c. Quia R. *undecimo die* Feb. *ult. præterito, in Cancell. noſtra recognovit ſe debere* N. *viginti libras, quas ei ſolviſſe debuit in Feſto, &c. tunc prox. ſequenti, ſicut conſtat, &c. Cancell. noſtræ, & eas ei nondum ſolvit, ut dic'; ac idem* N. *juxta Stat. indè editum, eligit ſibi liberari pro prædict. viginti libris omnia catalla & medietatem terræ ipſius* R. *tenend. juxta formam Stat. prædict': Tibi præcipimus, quòd catalla ipſius* R. *ad valenc. prædict. viginti librarum, per rationabilem appreciation. eorundem, exceptis bobus & aſris carucæ, in præſentia prædict.* R. *per te indè prænuniend', ſi intereſſe voluerit, faciend', præf.* N. *vel ſuo certo Attornato fac. liberar': & ſi catalla illa ad valenc. prædict. viginti librar. non ſufficient, tunc catalla illa ſic minùs valenc. per rationabilem appreciation', ac etiam medietatem terræ ipſius* R. *in Balliva tua per Extent. ſimiliter in præſentia tua in forma prædict. faciend', præf.* N. *vel dicto ſuo Attornato fac. liberar', tenend. ut liberum tenementum ſuum, quouſque dictum debitum indè fuerit levatum. Et de eo quod indè fec. nobis in dicta Cancell. noſtra tali die, ubicunque tunc fuerit, ſub ſigillo tuo diſtinctè & apertè conſtare facias: & habeas ibi hoc Breve. Teſte, &c.*

And after the year and the day of payment paſſed of C
the Recogniſance, the Recogniſee ought for to ſue a *Scire facias* againſt the Recogniſor, to ſhew what he can ſay why the Recogniſee ſhould not have Execution; and if he be returned upon that Writ warned by the Sheriff, if he do not appear, or if he do appear, and cannot ſay any thing wherefore he ſhould not have Execution, then the recogniſee

niſee may ſue forth the Writ of *Elegit* to have Execution of all his Goods and of the moiety of his Lands: and if the Sheriff return the *Elegit*, that the Recogniſor hath made a Feoffment in Fee of part of the Lands to divers Tenants, *&c.* and that he hath enfeoffed the King of the reſidue; then upon that Return the Lands whereof the King is ſeiſed by that Feoffment are diſcharged. But he may ſue a *Scire facias* to warn the other Tenants to appear at a certain day, to ſhew cauſe wherefore the ſaid Lands ſhall not be delivered in Execution; and if they be warned, and do not appear, or if they come, and cannot ſay any thing, *&c.* to bar the Execution, then the Recogniſee ſhall have Execution againſt them of thoſe Lands by Writ of *Elegit*, &c. but he ſhall have the *Elegit* before that he ſueth the *Scire facias* againſt thoſe Tenants.

D And if a man be bounden by Recogniſance in the Chancery, and the Recogniſor hath certain Indentures of Defeaſance, then, if the Recogniſee will ſue Execution upon the Recogniſance, the Recogniſor may come into the Chancery, and ſhew the Indentures of the Defeaſance, and that he is ready to perform them, and thereupon he ſhall have a *Scire facias* againſt the Recogniſee returnable at a certain day in the Chancery; and in the ſame Writ he ſhall have a *Superſedeas* directed to the Sheriff, that in the mean time he do not Execution by virtue of the Writ ſued forth by the Recogniſee. And if the Sheriff upon any ſuch Writ return, that he hath ſent to the Baily of the Liberty to doe Execution, which Baily hath returned him no anſwer; then upon that Return he ſhall have a new Writ directed to the Sheriff, [267] with a *Non omittas* therein, that he enter the Franchiſe and do Execution, *&c.*

A And a man may ſue Execution by *Scire facias* upon a Recogniſance made in the time of another King in the Chancery, or in the Common Pleas, or in the Court of Record. And the King may by his Commiſſion give authority to one to receive a Recogniſance of another man, and to return the ſame into the Chancery; and by virtue of that Commiſſion if a man doth before the Commiſſioners acknowledge a Debt to be paid to another at a certain day, *&c.* and certifie the ſame into the Chancery with the Commiſſion, *&c.* then upon the Certificate thereof, if he do not pay the Debt at the day, he ſhall have an *Elegit* upon the Conuſance ſo taken, as well as if it were taken in the Chancery: and the form of the Commiſſion is ſuch:

Rex dilecto & fideli ſuo R. de M. ſalut. Sciatis quod dedim.

vobis

vobis poteſtat. recipiend. Recognic. quam I. de H. cor. vobis facere voluerit G. de T. de quacunque pecunia ſumma; & ideo vobis mandamus, quod cum Recogn. illam receperitis, nos inde, ac de die ſive diebus ſolutionis, necnon de die caption. ejuſd', in Canc. noſtra, ſub ſigillo veſtro, diſtincte & aperte reddat. certior', hic Brev. nobis remittentes. Teſte, &c.

And there is another form thus: *Rex, &c. Sciatis quod dedimus vobis poteſtat. recipiend. hac vice, nomine noſtro, Recognition. quam I. de T. de quocunque debito facere voluerit coram vobis; & ideo vobis mandamus, quod cum Recogn. illam receperitis, nos ind. ſub ſigillo veſtro diſtincte, &c.*

And by that commiſſion he hath general authority to take Recogniſance of any man who will acknowledge any debt before him to any perſon whatſoever, *&c.*

See before 130. H.

If a man be bounden in Recogniſance in 100 *l.* to pay at five ſeveral days 20 *l.* then immediately after the firſt day of payment is paſt, he may ſue an *Elegit* for 20 *l.* and at the ſecond day he may ſue another *Elegit*, or *Levari facias* of other 20 *l.* and ſo of all the 20 *l.* every day of payment, and he ſhall have ſuch writ of *Elegit* for the payment that ſhall be made at that day, and ſhall not ſtay his Suit till all the days of payment are paſt. B

So note that *Capias ad Satisfaciend.* lieth not upon a Recogniſance. 34 H. 6. 45. 48 E. 3. 14.

Vi. 38 E. 3. 28 Br. Execution 42.

And if two be bound in a Recogniſance in Chancery, *viz. quilibet eorum in ſolid. recogn. ſe debere*, &c. he may ſue ſeveral *Scire facias* againſt them to have the money levied of their Goods and Lands, *&c.* C

If a man be bound in a Recogniſance in Chancery or other Court of Record, and afterwards the Recogniſee dieth, his Executors may ſue forth *Elegit* to have Execution of the Lands of the Recogniſor. And if the Sheriff return that the Recogniſor is dead, then the Executors ſhall ſue a ſpecial *Scire facias* againſt the Heir of the Recogniſor, and againſt thoſe who are Tenants of the Lands which he had at the day of the Recogniſance made; and that writ of *Scire facias* ſhall recite and ſhew that the Executors who ſue the writ have elected to have the moiety of the Lands which the Recogniſee had at the making of the Recogniſance: and the form of the writ is: D

Rex Vic. &c. Cum I. de W. tali die & an. &c. in Cancell. noſtra recognovit ſe debere N. nuper Duci Lanc. cent. libras, quas ei ſolviſſe debuit in Feſto, &c. tunc prox. futur', ſicut conſtat, &c. & eas ei nondum ſolvit, ut dicit', ac W. B. & C. Exec. prad. nuper Ducis defuncti, juxta Stat. inde edit', eleger. ſibi liberari pro prad. cent. libris omnia catalla & me-

dietat.

dietas, terra ipſius I. W. *tenend. juxta form. Statuti prad'; per quod tibi Præceperimus, quod ſcire faceres præf.* I. *de* W. *quod eſſet in Cancell. noſtra tali die proxim. futur', ubicunq;* &c. *ad oſtend. ſi quid pro ſe habere vel dicere ſciret, quare omnia catall. ſua & medietas terr. ſua præf. Execut. pro prad. cent. libis liberari non deberent, juxta form. Statuti prad. ac tu nobis retornaveris, quod prad.* I. *de* W. *mortuus eſt; Tibi præcipimus, quod ſcire fac. Hered. ipſius* I. *de* W. *necnon Tenentibus terr. qua fuit ejuſd.* I. *de* W. *die Recogn. prad. quod ſint in Cancell. noſtra,* &c. *proxim. futur', ubicunque,* &c. *ad oſtendend. ſi quid pro ſe habeant vel dicere ſciant, quare mediet. terra quam ipſi tenent de terra prad. præf. Execut. pro prad. centum libris liberari non debeant, juxta form. Stat. prad. Et habeas ibi nomina illor. per quos,* &c. *Teſte,* &c.

And thereby appeareth, That if a man be bounden in a Recogniſance, *&c.* although that the Recogniſee dieth, yet his Executors cannot ſue forth an *Elegit* to have Execution of the Recogniſance within the year after the day of payment, without ſuing forth a *Scire facias* againſt the Recogniſor, *&c.* But againſt the Heir of the Recogniſor, or the Terre tenants; the Recogniſee or his Executors ought to ſue forth a *Scire facias,* &c. otherwiſe if they be ouſted, *&c.* by ſuch Execution of their Lands, they ſhall have an Aſſiſe of *Novel diſſeiſin,* &c. 14 H. 7. 16. 15 H. 7. 16.

Writ de Idemptitate nominis.

THE Writ *de Idemptitate nominis* lieth, where a man is ſued in a perſonal Action, and upon the *Capias* or *Exigent* awarded, another man, who beareth the ſame name, is arreſted by force of the writ, then he who is ſo arreſted ſhall ſue forth this writ of *Idemptitate nominis*; and this writ ſhall be directed ſometimes to the Eſcheator, if he or his Goods be arreſted by him, or unto the Sheriff, if he be vexed or moleſted by him, and the form of the Writ is ſuch:

Rex dilecto ſibi I. *de S. Eſcheatori ſuo in Com.* Linc', *ſalut', Cum nuper, ut accepimus* I. *de* R. *de* Lond. *Taverner jam defunctus, ut dic', pro eo quod non venit coram Juſtic. noſtris de Banco ad reſpondend.* R. *de tempore quo fuit Receptor denarior. ipſius* R. *in Exigend. poſitus fuiſſet in Huſtingo noſtro* Lond. *ad utlagand. & ea occaſione die* Lunæ *proximo poſt Feſtum S.* Petri in Cathedra *anno regni noſtri decimo, utlagatus; ac jam ex parte* I. *de* R. *de* Lond. *Baker intellexerimus, quod licet ipſe non ſit idem* I. *de* R. *qui ad ſectam ipſius* R. *utlagatus fuit, nec aliqua bona ſeu catalla qua fuerunt ejuſdem utlagat. ad manus ſuas devener'; tu tamen, propter Idemptitatem hujuſmodi nominis & cognominis* I. *de* R. *pretendens ipſum* I. *de* R. *de* Lond. *Baker eſſe*

[286]

esse eundem I. de R. de Lond. *Tavern'*; *qui sic utlagatus fuit bona & catall. ejusdem* I. de R. de Lond. *Baker, coluer ejust. Brevis nostri, de bonis & catallis qua prad.* I. de R. de Lond. *Tavern. habuit in Balliva tua die promulgationis Utlagar. predict. in manum nostram capiend', in manum nostram seisire intendis, & ipsum eâ occasione multipliciter inquietes minus juste in ipsius* I. de R. de Lond. *Baker dampnum non modicum & gravamen; super quo nobis supplicavit sibi per nos de remed. provid': Et quia ipsum* I. de R. de Lond. *Baker indebitè pragravari nolumus, tibi prac', quòd si per inquisition. vel alio modo legitim. tibi constare poterit, prad.* I. de R. de Lond. *Baker non esse eundem* I. de R. de L. *Tavern. qui sic utlagat. fuit, nec aliqua bona seu catalla que fuerunt ejusdem utlagati die promulgationis Utlagaria predict. ad manus suas devenisse, ut est dictum, tunc captioni bonorum & catallor. ejusdem* I. de R. de L. *Baker, occasione Utlag. prad. in man. nostram supers. omnino. Proviso semper, quod de omnibus bonis & Catall. que prad.* I. de R. de L. *Tavern. habuit in Balliva tua die promulgac. Utlagar. prad', si que fuer', nobis resp', ut est justum. Teste*, &c.

And so if a man be distrained by Process out of the Exchequer for to accompt, &c. for another person who hath the same name which he hath, then he shall sue that Writ to the Barons of the Exchequer and to the Treasurer, and the Writ shall be such: A

Rex Thesaurar. & Baronibus suis de Scaccar. salutem. Monstravit nobis J. Clerke de N. *quod cum quidam* J. Clerke *nobis in quod. Compoto de exitibus passagii Viridis castr. reddendo die quo obiit tenebat', qui quidem* J. Clerke *mortuus est, & vocabat. dum vixit,* J. Clerke de A. *ut dicit', ac pro eo quod prad.* J. Clerke de N. *habet idem nomen & cognomen sicut pras.* J. Clerke de A. *ad reddend. nobis Compot. de exitibus prad. multiplicit. inquietari facitis minus juste, ut accepimus; super quo idem* J. Clerke de N. *nobis supplicaverit, ut sibi de remedio in hac parte subvenir. velimus: Nos tam pro nobis quàm pro pras.* J. Clerke *quod justum fuer. fieri volentes in hac parte, vobis mandam', quòd si per aliqua memoranda. dict. Scaccarii, vel per inquisitionem indè, si necesse fuerit, capiend', inveneritis ipsum* J. Cl. de A. *Commission. nostram de Officio illo habuisse, & exitus indè pratextu hujusmodi Commission. nostra aut alio modo recepisse, & ipsum* J. Clerke de N. *hujusmodi Commission. nostram non habuisse; nec se indè in aliquo intromisisse, & ipsum* J. Clerke de N. *propter Idemptitat. nominis & cognominis, & non alia de causa, coram vobis impetit. fuisse; tunc ipsum* J. Clerke de N. *ad reddend. nobis computum de exitibus predict. ad*

idem

idem Scaccar' grout juſtum fuerit, exonerari & quietum eſſe fac', Proceſſum debit. verſ. præf. J. Cl. *de A. ſi ſuperſtes ſit, vel hær', executores, ſeu terrarum & tenementorum ipſius* J. Cl. *de A. ſi mortuus fuerit, tenentes, juſta juris exigent. facientes. Teſte,* &c.

B And if a man be taken by a *Capias utlagatum*, he may ſue forth a Writ *de Idemptitate nominis* in the Chancery directed to the Juſtices of the Common Pleas, if the Proceſs be ſued there, or unto the Juſtices of the King's Bench, if the Proceſs be there, commanding them to make enquiry, *&c.* as afore is ſaid, *&c.* ſo as this Writ ſeemeth but as a Commiſſion to make enquiry, and to know the truth; and upon that Writ directed to the Juſtices, they ſhall award a Writ unto the Sheriff to make the Enquiry, *&c.* but if a man be outlawed in the Common Pleas, and taken by *Capias*, he may come into the Common Pleas, and pray a Writ of Enquiry whether he be the ſame perſon, without ſuing the Writ *de Idemptitate nominis*.

And if an *Exigent* be to be awarded againſt one, if one who hath the ſame name come and ſaith that he is ready to anſwer, then the Plaintiff may ſay that he is not the ſame perſon, and then the Plaintiff ſhall put a diverſity of the Names, and the ſame ſhall be entred, and then the *Exigent* ſhall be awarded according to that difference which the Plaintiff hath made.

At the *Exigent* returned the Defendant appeareth by *Superſedeas*, and the Plaintiff ſaith, that he that appeareth is not the ſame perſon: And the opinion of *Hanke* was, that he ſhall be put to his *Idemptitate nominis*, and ſhall not that way avoid the Outlawry.

C And if an *Exigent* be to be awarded upon an Indictment, if one come and ſaith, that he hath the ſame name as he againſt whom the Proceſs upon the Indictment is awarded, and prayeth that the King's Attorney may put a difference of their names; the ſame ſhall not be done, for that ſhould change the Indictment, becauſe the Proceſs ought to be made according to the Indictment; and if he be grieved by the Proceſs, he muſt ſue forth the Writ *de Idemptitate nominis*, and ſhall not have other remedy, *&c.* And he may have that Writ to the Juſtices of the Peace if they award Proceſs of *Utlagary* upon Indictments taken before them, and alſo to the Juſtices of Gaol-delivery, as appeareth by the Regiſter, *fol.* 195, 196. [269]

Writ de Homagio reſpiſtuando.

THE Writ of Reſpite of Homage lieth, when the Heir A comes of full age who holdeth of the King *in Capite*, and ought to ſue his *Livery*, then the Order is, that he firſt doe Homage to the King, and thereupon to have his Writ of *Livery* to the Eſcheator; but the King of grace and favour may reſpite his Homage as he pleaſeth: And thereupon he ſhall have a Writ unto the Eſcheator teſtifying the ſame, and commanding him to deliver him Seiſin of the Lands; and the Writ ſhall be ſuch:

Rex illecto, &c. Eſchear' ſuo, &c. ſalutem. Scias quod reſpituavimus Homagium T. ferr. & her. 1. filii T. de B. defuncti, nobis de omnibus terris & tenem. quæ prad. T. frater ſuus tenuit de nobis in Capite die quo obiit debitum, uſque ad Feſtum S. Michael. prox. futur', & terras & tenem. illa ei reddidimus, Et ideo vobis mandam', quod accepta Secur', &c.

Writ de Hæretico comburendo.

NOte, it appeareth by *Britton* in his Book, that thoſe B perſons ſhall be burnt who feloniouſly burn others Corn or others Houſes, and alſo thoſe who are Sorcerers or Sorcereſſes; and Sodomites and Hereticks ſhall be burnt: And it appeareth by that Book, *lib. 1. cap. 17.* that ſuch was the Common Law. But note, that the perſon who ſhall be burnt for Hereſie ought to be firſt convict thereof by the Biſhop who is his Diocеſan where he dwelleth, and abjured thereof, and afterwards, if he relapſe into that Hereſie or any other, and thereof be condemned in the ſaid Dioceſs, then he ſhall be ſent from the Clergy to the Secular Power, to doe with him as it ſhall pleaſe the King, *&c.* And then it ſeemeth the King, if he will, may pardon him the ſame. And the form of the Writ is ſuch:

Rex, &c. Majori & Vic' London. ſalutem. Cum venerabilis C *pater, Thom. Archiepiſcopus Cantuar', totius Angliæ Primas, & Apoſtolicæ Sedis Legatus, de conſenſu & aſſenſu ac conſilio Epiſcoporum & Confratrum Suffragan. ſuorum, necnon totius Cleri Provinciæ ſuæ in Concilio ſuo Provinciali congregat', juxta ordinibus in hac parte requiſit. in omnibus obſervat', W. Sawtr', aliquando Capellanum, in Hæreſ. damnat', & per ipſum Willielmum præantea in forma juris abjurat', & per ipſum Will. in Hæreſim prad' relapſ', per ſuam ſententiam definitivam Hæreticum manifeſtum pronunc. & declarav', ac degradandum*

fore

fore decreverit, & ab omni prærogativa & privilegio Clericali ea de causa realit. degradaverit, ipsumque Will. *Foro Seculari relinquendum esse decreverit, & realiter reliquit, juxta Leges & Canonicas Sanctiones editas in hac parte, ac Sancta Mat. Ecclesia non habet ulterius quid fac. in præmiss': nos igitur, zelator Justitiæ & Fidei catholicæ cultor, volentes Ecclesiam Sanctam ac jura & libertates ejusdem manutenere & defendere, & hujusmodi Hæreses & Errores de Regno nostro* Angliæ *(quant. in nobis est) radicitus extirpar', ac Hæreticos sic convictos animadversione condignâ puniri; attendentesque hujusmodi Hæreticos in forma prad. convictos, & damnatos juxta Legem divinam & humanam canonicâ institutione, & in hac parte consuetudinar', ignis incendio comburi debere; vobis districtiùs quo possumus præcipimus, firmiter injungentes, quod præf.* Will', *in custodia vestra existent', in aliquo loco publico & aperto infra Libertat. Civitatis prad. causâ præmissâ cor. populo public. igni commit', ac ipsum in eod. igne realit. comburi fac', in hujus criminis detestationem, aliorumque Christianorum exemplum manifestum: & hoc sub periculo incumbente nullatenus omittatis. Teste,* &c.

D And by that Writ it appeareth, that a man ought to be convicted of the Hereſie by the Arch-biſhop and all the Clergy of that Province, and abjured for the ſame, and afterwards anew convicted and condemned by the Clergy of the ſame Province, and that in their General Council of Convocation. But now by the Statute of *Hen.* 4. *cap.* 15. it is enacted, That every Biſhop in his Dioceſs may convict a man of Hereſie, and abjure him, *&c.* and afterwards convict him anew thereof, and condemn him, and warn the Sheriff or other Officer to apprehend him, and burn him, *&c.* And that the Sheriff or other Officer ought to doe the ſame by the precept of the Biſhop, and without any Writ from the King to doe the ſame. And that is the cauſe (as it ſeemeth) that that Writ is not put in the new Regiſters, becauſe that Writ ought not at this day to be ſued forth, but is as it were void by reaſon of the ſaid Act.

But now by the Statute made *Anno* 25 *H.* 8. *cap.* 14. that Statute which was made *Anno* 2 *H.* 4. is repealed and made void. And now it is enacted by this late Statute, That he who is abjured for Hereſie, and afterwards falleth into Relapſe, and is convicted thereof before the Ordinary, that yet the Ordinary ought not for to commit him to the Lay-power to be burnt, without the King's Writ firſt obtained for to burn him, as appeareth by the ſaid Statute of 25 *H.* 8. [270] *cap.* 14. more at large.

Writ upon the Statute of Marlebridge *for a Fine for Non fair pleading.*

THE Writ upon the Statute of *Marlebridge* for not fair pleading lieth, where the Sheriff or other Baily in his Court will take a Fine of the party, Plaintiff or Defendant, because he did not plead fairly, *&c.* and the Writ ſhall be directed to the Sheriff himſelf, or Baily, or him who will demand ſuch Fine; and it is a Prohibition to him, commanding him that he do not demand ſuch Fine; and it may be ſued by the whole Hundred, or by all the County together, where he will require ſuch manner of Fine of them. And the Writ is ſuch: A

Rex Vic', &c. *Cùm de communi conſilio*, &c. *proviſ. ſit, quòd nec in itineribus Juſtic'*, *nec in Com'*, *Hundred'*, *vel in Curia Baronis de cætero ab aliquibus capiantur Fines pro pulchrè placitand'*, *neque per ſic quòd non occaſionent': Tibi præcipim', quòd ab W. hujuſmodi Finem de cætero non exigas, vel exigi facias, contra form. proviſionis præd'*; *& diſtrictionem, ſi quam*, &c. B

And for the Hundred the Writ ſhall be ſuch: *Tibi præcipimus, quòd à communitate Hundredi de* I. *hujuſmodi Finem de cætero non exigas, vel exigi facias, contra form'*, &c.

And by the Rule in the Regiſter it may be againſt every other man who will diſtrain for ſuch Fine, and he may have an *Alias*, and a *Pluries*, and an Attachment upon the ſame: and if after the firſt Writ of Prohibition delivered he diſtrain for ſuch Fine, then the party who is diſtrained may ſue forth an Attachment againſt the Sheriff or Baily, or him who diſtrain eth him: and the form of the Attachment is ſuch: C

Rex Coronatoribus ſuis in Com. Linc. *ſalutem. Si* A. *fecerit*, &c. *tunc ponite*, &c. B. *Vic. noſtrum, vel Vic. noſtrum Com. prædict'*, *quòd ſit cor. Juſtic. noſtris*, &c. *oſtenſ. quare cùm de communi conſilio*, &c. [uſque ibi, *ab aliquibus non capiantur Fines pro pulchrè placitand'*, *neque per ſic quòd non occaſionent'*,] *idem Vic'*, *vel idem* B. *diſtrinxit præf.* A. *pro hujuſmodi Fine præſtand. in Com. præd'*, *contra form. proviſion. præd'*, *ac contra prohibic. noſtram. Et habeas ibi*, &c. *& Averia ipſius* A. *eâ occaſione capta interim deliberari fac'. Teſte*, &c.

But note, that he may ſue forth that Writ of Attachment againſt the Sheriff, or other, although that he never ſueth forth any Writ of Prohibition before directed to the Sheriff, or Bailiff, but then he ought for to be diſtrained for

for that Fine; for the Statute in it ſelf is a Prohibition to the Sheriff, and to all others, that they do not diſtrain for ſuch Fine for fair pleading; but if the Sheriff, or other, demand ſuch Fine, and doth not diſtrain for the ſame, then he cannot have a Writ of Attachment for ſuch demand made, becauſe he is not damnified by the demand, *&c.*

Attachment upon a Prohibition. Br. 13. Vid. 9 H. 6. 61. & 19. H. 6. 34. *Aſcue.*

Grants made by the King expreſſed and contained in the Regiſter, to be remembred.

D *REX Ballivis & probis hominibus Villæ de* P. *ſalutem. Sciatis quòd de gratia noſtra ſpeciali conceſſimus vobis in auxil. Villæ prad. paviand', quod à die confectionis præſentium, uſque ad finem quinque annorum proxim. ſequent. plenariè complendorum, capiatis in eadem Villa Conſuetudines ſubſcriptas; viz. de quolibet Summag', &c. Et ideo vobis mandamus, quòd Conſ. prædict. uſque ad finem termini prædict. capiat', ut prædict. eſt; completo autem termino dictor. quinque annor', dicta Conſ. penitus ceſſent & deleant'. In cujus, &c.*

Grant of a Stewardſhip.

E *REX, &c. Sciatis quòd conceſſimus dilecto & fideli noſtro* W. *de* H. *officium & regimen Seneſchalciæ, &c. cum omnibus ad dictum officium pertin', quamdiu nobis placuerit: Et ideo vobis mandamus, quòd eid.* W. *in omnibus tanquam Seneſchall. pareat', reſpondeatis, & fideliter intendatis. In cujus, &c.*

Grants of Letters Patents.

F SEE in the Regiſter notable forms of Grants of Letters Patents made by the King in divers manners, eſpecially amongſt the Writs of *Ad quod dampnum*, and alſo after the Writs *de Corrodio habendo*. And there is a Patent made, *De cuſtodia Foreſtæ Regis, in recompenſationem certæ ſummæ, alicui per Regem ad vitam ſuam conceſſam.*

And other Patents there made upon Indentures between the King and others, upon a borrowing of money by the King, by which Patents the King doth grant to hold and keep Covenant, *&c.*

The Grant of the King of the firſt Benefice which ſhall happen void is ſuch:

Rex

Rex Cancellario suo qui nunc est, vel qui pro tempore fuerit, vel Custodi magni Sigilli salut'. Promotionem alicujus Clerici nostri A. præcepto huic scribc. sub tam Dom. Edwardo quondam Regi Angl'. avo nostro, quam nobis impensis, credit. affectuosè, ac volentes ipsum à premissa considerazione favore prosequi gratioso, volumus quod idem A. ad primum Beneficium Ecclesiasticum, taxationem viginti marcarum excedens, vacaturum, quod ad Præsentac. nostram pertinuerit, & quod duxerit acceptand', præsentetur. Et ideo vobis mandamus, quod eidem A. Literas nostras de Præsentac. ad primum Beneficium Ecclesiasticum vacaturum, quod ad nos sic pertinuerit, & quod duxerit acceptand', sub prad. magno Sigillo nostro in forma prad. habere faciat'. in cujus, &c. Teste, &c.

[271]

But such Grants are not in use at this day:

A Grant of the King to one of his Chaplains of a yearly Pension out of the Exchequer, untill he be promoted unto a Benefice, is thus: A

Rex omnibus ad quos, &c. salut'. Attendent. grata & laudabilia obsequia quæ dilectus Clericus noster A. nobis ante hac tempora gratant. exhibuit, super quibus tam per dilectum & fidelem nostrum W. quàm alios fideles nostros, famas veritudinaliter informati, speranteque; quod in nostris agend. suæ affect. & benevolentia puritate continuabit successivis actibus in futur', ac volentes ipsum munere prosequi gratioso; concessimus ei quandam annuam Pensionem xx. marcarum percipiend. singulis annis ad Scaccar. nostrum ad Festa Paschæ & S. Mich' per æquales portion', quamque ei per nos fuerit provisum infra regnum Angl' de Beneficio Ecclesiastico quod duxerit acceptand'. In cujus, &c. Teste, &c.

There is another Grant in the Register, *fol.* 295. made by the King to one, to give him authority to reconcile the King's Enemies who have left their Obedience, and adhered unto other the King's Enemies, &c. and to grant Pardon to them; and the Grant is such: B

Rex universis & singulis, &c. ad quos, &c. sal. Sciatis quòd nos de fidelitate probata & circumspectione provida dilecti & fidelis nostri Antonii Lucy *plenariè confidentes, dedimus eidem* Antonio *plen. tenor. præsent. potestat. nomine nostro recipiend. ad fidem & pacem nostram homines de partibus de* Galloway *in* Scotia, *ad fidem & pacem nostram non existent', & alios qui eisdem* Scotis *contra nos adhærent, seu adhæserunt, & cum eis contra nos de inimicitia nostra fuer', & qui ad fidem & pacem nostram venire voluer', & quos ad fidem & pacem hujusmodi for. viderit admittend'; & Literas de Pardonatione dictarum adhæsionis & inimicitiæ, necnon de hujusmodi admissione ad pacem*

penitus subtrahat, eisdem hominibus pro securitate sua in hac parte quoniam nostro faciend'; ratum & gratum habitur. quicquid idem Anno. fecerit nom. nostro in premiss'. In cujus, &c. Teste, &c.

C There is another Grant made unto one of the Cuſtody of a Caſtle, and the Ammunition therein, for what time it ſhall pleaſe the King, and a Writ thereupon directed to him who had the Cuſtody thereof before, to deliver to him the Caſtle, and the implements and things appertaining to the ſame.

And you may ſee there the Patents made to Sheriffs to be Sheriffs of the Counties; and alſo the Patents made to the Eſcheators of the Counties, and alſo the Writs to the old Sheriffs and Eſcheators to deliver into them the Rolls and Writs, *&c.*

A

D And Letters Patents of Attendants unto Archbiſhops, Abbats, and all others, to be Attendants unto them in thoſe things which do appertain to their Office. The form of Nomination to be made by the King to any Abbey or other perſon. Of one to be Vicar, and that the Abbat do preſent him over to the Ordinary. And alſo the form of Revocation made by the King of that Nomination. And alſo the form of the Writ which the King ſends to the Ordinary to admit of that Revocation, and to admit another perſon by another Nomination. All theſe appear in the Regiſter, *fol.* 302.

And divers other Preſentations made by the King, and alſo Revocations of his Preſentation; and alſo Nominations made by the King in his own right, or in the right of others, are there in the Regiſter: and Grants made by the King of Donatives, and the Writs directed unto the Sheriffs to put them in poſſeſſion; and Writs there to the Ordinary, to aſſign unto a Prebendary *Stall. in choro, & locum in capitulo,* who hath the Prebend by the King's Collation: and divers Ratifications there made by the King to divers Incumbents of Churches, or Prebends, which they have in poſſeſſion as Incumbents, *&c.*

B

And many forms of Writs made to Abbats or Biſhops, to have yearly Penſions for his Chaplains, untill they are promoted to Benefices: and the Writ to the Chancellor, to preſent in the King's name ſuch a one, the King's Chaplain, to the firſt Avoidance of any Benefice which ſhall be void, which appertains to the King: and alſo Grants by the King to receive a yearly Penſion out of the Exchequer.

And

And divers forms of Writs of Proxy are in the Register, to sue, defend or answer, &c. or to resign a Benefice, &c.

And the form of the Resignation, &c. and the form to make Procuration when a man will resign his Benefice, &c. appear in the end of the Register, in *fol.* 302. and in other *fols* there following.

And so endeth this present Treatise, called, New Natura Brevium, *which Book fully declares the Natures of the Original Writs contained and all expounded in the Register.*

FINIS.

